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MASSACHUSETTS DIGEST



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Volumes 232-238 Inclusive

1922

By
WALTER ALEXANDER LADD
Author of Kellen's Mass. Digest, Vol. II, 151-212
Hildreth's Mass. Digest, Vol. I, 212-231

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PREFACE

The opinions of the Supreme Judicial Court comprise the sole and only source from which the author has compiled this volume, as well as Kellen's Index-Digest Massachusetts Reports Volume 2 and Hildreth's Massachusetts Digest Volume 1. In so far as brevity and conciseness will permit the exact language of the opinions is followed.

This volume is cumulative including Volumes 232 to 238 inclusive of the Massachusetts Reports and together with Kellen's Index Digest-Massachusetts Reports Volume II and Hildreth's Massachusetts Digest Volume 1 the author places in the hands of the profession a digest of the opinions of our Supreme Judicial Court contained in Volumes 151 to 238 inclusive of the Massachusetts Reports. Volume II, Part 1 Hildreth's Massachusetts Digest being included in this volume.

Attention is called to local topics and titles and the subject matter contained thereunder and not so found in other Digests such as Automobiles, Beneficiary Associations, Boston, Boston Chamber of Commerce, Boston & Maine Railroad, Building Act and Building Laws, Cambridge, Commonwealth, Constitutional Law, Devise, Fall River, Harvard College, Holyoke, Jurisdiction, Land Court, Lowell, Massachusetts Institute of Technology, Massachusetts Reformatory, Police District, etc., Courts, Practice, Probate Court, Referendum, Rules of Court, Soldiers' & Sailors' Civil Relief Act, Somerville, Superior Court, Supreme Judicial Court, Unlawful Interference With Contract, Waiver, Worcester, Workmen's Compensation Act.

WALTER ALEXANDER LADD

PUBLISHERS' FOREWORD

We now present you another Massachusetts Digest, which is easily used, brief but comprehensive, and adapted for use in conjunction with our previous Digest Volume I Hildreth's Massachusetts Digest and Kellen's Index-Digest Volume II.

Our Digest is now in general use throughout the country, which is a source of great satisfaction to both the Author and the Publishers. We wish to express our grateful thanks to the profession for their appreciation of our efforts.

You will notice that our Digest is cumulative and that although on the same plan and far more expensive to publish, the cost is only about one half that of Sheppard's Citations.

Subscribers are entitled to our Table of Topics, Massachusetts Classifications Plan, in which local practice can be readily found with references at once available to all relative cases digested since 1912.

Again we call your attention to the fact that the emolument for either the author or publisher is entirely inadequate taking into consideration the very considerable effort which we have been put to to place in your hands these Digests of our Massachusetts Reports.

MASSACHUSETTS DIGEST ASSOCIATES, INC.

EUGENE W. HILDRETH, President

September 1922.

DIGEST OF DECISIONS OF THE MASSACHUSETTS SUPREME JUDICIAL COURT

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- 1 GENERALLY

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- 3 COURTS

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II Award
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A warrant for the, of a person in extradition proceedings cannot be served by an officer of the division of State Police, when

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Grave's Case 236-493

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Grave's Case 236-493

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dwelling owned by A. L. Motion for a change of venue properly denied. Defendants' motion to quash, plea in abatement and plea in bar overruled.

Com. v. Leventhal 236-516

Trial of an indictment for, where the defendant was charged with being accessory before the fact of the burning of his house by one Levine with intent thereby to defraud certain insurers thereof: i. e. that the defendant did "incite, procure, aid, counsel, hire and command" Levine to burn his house. Evidence as to intent. Defence that the fire was set by one Lurie and not by Levine.

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ASSESSMENTS

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- 2 WHAT IS NOT ASSIGNABLE

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III Creditors Benefit

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A partial, of funds to a third person by a creditor is valid in equity without the assent of the debtor, trustee or stakeholder.

Andrews Elec. Inc. v. St. Alphonse Cath. etc. Soc. 233-20

An, of wages under St. 1909 c. 514 § 124 as amended by St. 1916 c. 208 § 2 is binding on the wages earned by the assignor within two years of the, even though it is sought to be enforced against one who becomes an employer of the assignor subsequent to the.

Gilman v. Raymond. . . . 235-284

2 WHAT IS NOT ASSIGNABLE

Held that each of the beneficiaries under a certain trust received an equitable interest which was inalienable and neither the assignees nor the trustee in bankruptcy of one of the beneficiaries received any title to his share in the trust property.

Haskell v. Haskell. 234-442

II Consequences

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Enforcement of an, of wages against one who becomes an employer of the assignor subsequent to the,

Raulins v. Levi. 232-42

Gilman v. Raymond. . . . 235-284

Enforcement of an, of an interest in a trust made assignable by an agreement of compromise of a controversy concerning a will. The assignor of such an interest cannot repudiate the.

Woodard v. Snow. 233-267

Where the plaintiff the assignee of certain accounts gave no notice of the, to the debtors he cannot recover against a later assignee of the same accounts for money had and received.

Rabinowitz v. People's Nat. Bk. 235-102

By owner of property of rights under a construction loan agreement. Recovery by assignee for labor and materials furnished by him.

Albert v. Boston Mortgage Bond Co. 237-118

Held that the plaintiff the assignee of a non-negotiable chose in action could not maintain an action thereon in his own name as assignee unless the, was in writing.

Pritchard v. Uphams Corner Theatre Co. 238-441

III Creditor's Benefit

(No case found)

IV Execution

(No case found)

See Action I, 1, Insurance IV, 3, Guardian V, Landlord and Tenant IX, Mortgages III, Trust III, Public Works, Will I.

ASSUMPSIT

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I In General

II Account Annexed

III Account Stated

IV Goods Sold and Delivered

V Indebitatus Assumpsit

VI Labor and Services

VII Money Had and Received

VIII Money Lent

IX Money Paid

X Use and Occupation

XI Pleadings

I In General

(No case found)

II Account Annexed

Count annexed for recovery by a daughter for services rendered her mother.

Sherry v. Littlefield. 232-220

Action on an, for rent of a store.

Reidy v. Kennedy. 233-514

For services rendered and disbursements incurred in raising a sunken lighter belonging to the defendant. Claim of defendant for damages in recoupment because the raising of the lighter was done in an improper manner. Proof of negli-

gence of plaintiff. Liability of plaintiff for the damage caused to the defendant. Worth of the plaintiff's services.

Betts v. Rendle 236-441

Against a principal contractor for the balance alleged to be due upon the purchase price of material billed and shipped to the defendant for the use and on the order of a sub-contractor of the defendant.

Sanderson v. Carroll 238-142

III Account Stated

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IV Goods Sold and Delivered

Burden of proof in an action for. Father's liability for the purchase price of goods for the home of his married daughter.

Jackson Caldwell Co. v. Poto
235-58

Delivery by the seller to a carrier other than the one named by the buyer in an action for.

St. John Bros. Co. v. Falkson
237-399

V Indebitatus Assumpsit

(No case found)

VI Labor and Services

Held that the assignee of a construction loan agreement could not recover upon a quantum meruit for the value of the labor and materials less the amount which he received.

Albert v. Boston Mortgage Bond Co. 237-118

Action on a written contract for the alteration of a building to recover for, and materials furnished. Held that the contract was substantially performed.

D'Urso v. Leone 238-58

VII Money Had and Received

Where the plaintiff the assignee of certain accounts gave no notice of the assignment to the debtors he cannot recover against a later assignee of the same accounts for.

Rabinowitz v. People's Nat. Bk.
235-102

A wrongful and entire failure by the defendant to perform the contract authorized its rescission by the

plaintiff, and entitled him to recover the amount paid upon a count for.

Cohen v. Wintman 236-471

Action by an administrator with the will annexed against the guardian of a minor son of the deceased.

Murphy v. Duane 238-483

VIII Money Lent

(No case found)

IX Money Paid

(No case found)

X Use and Occupation

(No case found)

XI Pleadings

(No case found)

ATTACHMENT

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I In General

- 1 WHAT IS ATTACHABLE
- 2 WHAT IS NOT ATTACHABLE

II Consequences

III Dissolution

IV Exemption

V Priority

VI Validity

I In General

- 1 WHAT IS ATTACHABLE

Of registered real estate of a corporation. Levy on execution during pendency of proceedings for the appointment of a receiver of the corporation. Held that sale on execution was wholly illegal and void.

Davis. v. Mazzuchelli 238-550

- 2 WHAT IS NOT ATTACHABLE

Real estate which is conveyed to first grantee and by her immediately conveyed to another cannot be attached as land of the first grantee standing in the name of her grantor, when

Piantadori v. Nally 233-158

II Consequences

An attaching creditor stands in the position of a purchaser for value.

Hillside Co-Operative Bk. v. Cavanaugh 232-157

Where the debtor's interest in certain real estate has been attached on mesne process and the real estate has been sold by the administrator of the estate, on facts as stated held that the plaintiff had established his lien and is entitled to payment out of the proceeds of said sale of real estate in the hands of the administrator as against a subsequent attaching creditor.

Bartlett v. Moore 233-481

Held that the deed of an insane person being voidable as to the judgment debtor and grantee was voidable as to the attaching creditor although the attaching creditor was in the position of a purchaser for value.

Brewster v. Weston 235-14

III Dissolution

Of an, by a statutory bond in trustee process where no personal service had been made on the defendants.

Britton v. Goodman 235-471

An, made upon a writ is dissolved by failure to enter the action in which it was made although undischarged on the record.

Solovicos v. MacLachlan 236-402

IV Exemption

(No case found)

V Priority

(No case found)

VI Validity

An, of mortgaged personal property is void if the mortgaged property when taken by the officer was not in the possession of the mortgagor. Liability of the officer to the mortgagor and to the mortgagee for conversion.

Haskell v. Carroll 232-424

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See Execution IV, Judgment and Decree, Malicious Prosecution, Mortgages IV, Municipal Corporation, Officer, Trover, Trustee Process III.

ATTEMPT TO COMMIT CRIME

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(No case found)

ATTESTATION

See Will.

ATTORNEY AND COUNSELOR

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I Admission

II Authority

III Compensation

IV Liability

V Removal

I Admission

A petition for, to the bar is a proceeding at law and not in equity. Order dismissing petition for affirmed.

De Propper Pet'r 236-500

II Authority

Final decree taken as a disposition adversely to the plaintiff of the question as to the, of counsel for one of the defendants.

Clark v. Waban Rose Conservatories 234-34

A court acquires no jurisdiction over a defendant where an, without, accepts service of process and enters appearance for him in court.

Hanzas v. Flavio 234-320

Where plaintiff contended that a stipulation entered into by the attorneys for both parties did not include the entire contract but that the parties made a further oral agreement. Lack of, of, for defendant to make such an oral agreement. No ratification of the oral agreement by the defendant.

See v. Norris 234-345

III Compensation

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A member of the bar of another state but not a member of the bar of this state may recover a reasonable, for legal services rendered in this state to a client here.

Brooks v. Am. Assoc. of Masters, Mates & Pilots 233-168

An exception to the refusal of a single justice on an appeal from the Probate Court to rule on the question of the value of the legal services rendered by an, for an estate overruled.

Wordell v. Grim 236-406

Action by an, to recover for legal services rendered to several persons who were associated together for the purpose of forming an electric railroad company. Evidence showing employment of plaintiff by defendants although some of the defendants never "personally saw, talked with, or wrote to the plaintiffs."

Storey v. Bickford 237-284

Where the plaintiff objected to her attorney's the defendant's bill. Held that the defendant as the plaintiff's attorney could not in the proper performance of his duty insist that before she received any of the money due she must agree to release him from all demands. Held that the judge was warranted in finding that the release was subject to the condition imposed by the defendant and was not fairly and honestly obtained. Held that the evidence relating to what was said in the defendant's office when the release was signed was plainly admissible.

Lanigan v. Scharton 238-468

IV Liability

Bill to compel a reconveyance of real estate conveyed to the defendant on the ground that he had obtained it through a breach of the trust reposed in him as their, by the plaintiffs dismissed.

Dunne v. Cunningham . . . 234-332

V Removal

(No case found)

See Champerty and Maintenance, Equity II, Practice I, Mortgage I, Record, Will VII.

ATTORNEY GENERAL

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An information in the nature of a quo warranto may be brought by the, in behalf of the Commonwealth to test the question whether the franchises and prerogatives of a municipal corporation have been usurped. The municipality nominally and in fact exercising such franchises and

prerogatives may be made the party defendant. Joinder with the, of a private citizen the relator. Argument by relator's counsel. Such information must be prosecuted by or under the immediate supervision of the, only.

Att'y Gen'l v. Methuen . . . 236-564

Right of the, or a Special Assistant, appointed for that purpose to be present in his official capacity during the deliberations of the grand jury.

Com. v. Kozlowsky 238-379

AUCTIONEER

(No case found)

AUDITA QUERELA

(No case found)

AUDITOR

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A proffer of new and additional evidence by the plaintiff on the coming in of the report of the, is cause shown for hearing the parties within the meaning of Rule 31 of the Superior Court.

Sherry v. Littlefield 232-220

Rulings of law by an, are not strictly a part of his report which must be considered only on the facts found by him.

Zembler v. Fitzgerald 234-236

Judgment on report of an. Held that the finding for the defendants imported a finding in their favor of all the subsidiary facts essential to that conclusion.

Bendsley v. Lovell 235-133

The auditor's report is prima facie evidence and requires a judgment in accordance with its findings of facts unless taking all the facts found both primary and subsidiary the report is reasonably susceptible of more than one inference.

Barrell v. Paine 236-157

Title Guaranty & Surety Co. v.

Ley & Co. Inc. 238-113

Material findings by the. Motion for a jury issue. Judgment according to the auditor's report. When a party does not persist in or rely upon

his seasonably claimed right to a jury trial, or, waiving that claim, does not ask that the case be heard by a judge, a proper case is presented for disposition on a motion for judgment upon an auditor's report.

Wheeler v. Tarullo..... 237-306

Report by a judge of the Superior Court of an action of law where a judgment had been ordered for the plaintiff in accordance with the findings of the. The full court cannot consider rulings requested by the defendant at the hearing before the, as the questions were not raised before the trial judge.

D'Urso v. Leone..... 238-58

The findings of fact made by the judge upon those of the, are not open to revision.

Title Guaranty & Surety Co. v. Ley & Co. Inc..... 238-113

Where the, without hearing further evidence and without reconsideration of the evidence formerly heard by him as special master made as his report the findings previously made by him as special master. Motions to recommend and to discharge the report of the, denied. Held that the report of the, was rightly admitted in evidence at the trial upon the auditor's report and other evidence.

Hosher-Platt Co. v. Miller
238-518

AUDITOR OF ACCOUNTS

(No case found)

AUTOMOBILES

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- I In General
- II Garage
- III Negligence
- IV Registration

I In General

Validity of city ordinance concerning the licensing and operation of, for hire. Granting and revocation of such licenses. Municipality under no obligation to grant such licenses.

Burgess v. Mayor etc. of Brockton
235-95

Insurance of an, against theft.
Failure of the insured to give the re-

quired proof of loss. Held that there was no waiver of the required notice of loss by the insurance company.

Navickis v. Firemen's Fund Ins. Co..... 235-256

Insurance of an, against theft. Held that the plaintiff could not recover because he was not when the policy was issued the sole and unconditional owner of the.

Ballard v. Globe & Rutgers Fire Ins. Co..... 237-34

Held that the defendant the owner of an, was liable to the plaintiffs for the rebuilding and renovating of the, where no stated price was agreed upon and where the defendant knew of the work being done by the plaintiffs and gave them no directions to discontinue further work although the expense of making over the, was more than it originally cost.

Horton v. Phillips..... 238-7

Action on a contract between the parties whereby the plaintiff dealer was given the right to sell certain, trucks manufactured by the defendant in a certain territory the plaintiff agreeing to purchase a certain number of the trucks the first year. Failure of the plaintiff to purchase the required number of trucks. Surrender of the contract. Judgment for the defendant.

Vim Truck Co. v. Vim Motor Truck Co..... 238-68

Where it was charged that the defendant "did attempt to steal one automobile." Held that there was ample evidence to warrant a verdict of guilty.

Com. v. Kozlowsky..... 238-379

II Garage

Action to recover for the loss of an, stored in the defendant's, under a contract of "live storage." Keeping by defendant of record of the coming in and going out of automobiles. Negligence of defendant's employees.

Hayes v. Maykel Automobile Co.
234-198

Agreement by the defendant a, proprietor with the plaintiff a dealer in oil to use equipment loaned to him by the plaintiff for the sole purpose of selling gasoline purchased by him of the plaintiff held not to be invalid as a contract in restraint of trade.

Quincy Oil Co. v. Sylvester
238-95

III Negligence

On facts held that jury was not warranted in finding that the driver of the, was acting for and representing the defendant at the time of the accident.

O'Rourke v. A-G. Co. Inc. 232-129

Statement of driver "that the A-G. Company would take care of the boy" not binding on the company.

O'Rourke v. A-G. Co. Inc. 232-129

In an action by an administrator to recover under separate counts for the conscious suffering and death of his intestate who was struck and fatally injured by the defendants, the administrator under the statutory count for causing the death of his intestate is acting for the next of kin of the intestate and under the common law count for the conscious suffering of his intestate he is acting as the representative of the estate of the deceased.

Eldridge v. Barton. 232-183

Proof of ownership affords no presumption that the, was in the control of the owner or his agent, or engaged in the owner's business, at the time of an accident.

Canavan v. Giblin. 232-297

Where a girl about ten years of age was knocked down and injured by a motorcycle when alighting from a street car. Evidence admissible to show "the amount of force applied to her body." Recovery of consequential damages.

Wilder v. General Motorcycle Sales Co. 232-305

Due care of plaintiff who while riding a motorcycle in the evening on a public way came in collision with the defendant's wagon.

Hallett v. Crowell. 232-344

Where the driver of a motor truck being forced to change the direction of his truck to avoid a collision with the defendant's, ran into the plaintiff's. Held that the owners of the truck and the defendant were concurrent tortfeasors and could be sued jointly or severally.

Foley v. Lord. 232-368

Liability of defendant who while driving his, at great speed in violation of the law of the road and without sounding his horn struck another,

with such force as to cause the latter to strike and injure the plaintiff.

Meech v. Sewall. 232-468

Owner of motor truck held not liable where boy about eight years of age suddenly left the sidewalk and walked or ran into the street where he was knocked down and killed by the motor truck.

Lovett v. Scott. 232-541

Collision between a motorcycle and an automobile. Driver of the automobile at the time of the accident was acting within the scope of his employment. As to deviation by the driver from his usual course or route.

Mathewson v. Edison etc. Co. of Boston. 232-576

Where woman was run into by a motor truck. Scope of employment of driver who at the time of the accident was accompanied by an instructor furnished by the seller of the truck to teach him how to drive it; the accident happening after the driver's regular work for the day was finished and when he was on the way home.

McGrath v. Wehrle. 233-456

Due care of person run over by, while crossing a city street. Negligence of defendant in not sounding his horn and driving the, at an excessive rate of speed.

Buoniconti v. Lee. 234-73

Action for personal injuries received when a hired, ran into a post at the side of a highway to avoid a collision with a railroad train on a grade crossing. Contributory negligence of the chauffeur in operating the car without a proper license. Chauffeur's negligence not to be imputed to plaintiff.

Griffin v. Hustis. 234-95

Defendant held not liable for damages to the plaintiff's, which was run into by an, owned by the defendant and operated by his son, who was unaccompanied by his father. Evidence is necessary to show that the son acted as his father's servant.

Weiner v. Mairs. 234-156

Collision between an, and a street car. Questions of the negligence of the plaintiff and also of the motor-man for the jury.

Davis v. Worcester Cons. St. Ry. 234-297

Collision between two. Finding warranted that at the time of the accident the driver of the defendant's car was temporarily the servant of the defendant.

Chute v. Morey 234-387

Collision between an, and a "double ripper" upon which the plaintiff's were coasting. Due care of the driver of the "double ripper" and negligence of the defendant. Effect of city ordinance prohibiting coasting on certain streets.

Cowles v. Springfield Gas Light Co. 234-421

Collision between two. Liability of defendant its automobile being driven at the time of the accident by a person employed by it as a salesman and "demonstrator" of.

Hoffman v. Liberty Motors Inc. 234-437

Of the defendant the driver of an, who took off the brake instead of putting "on the brakes hard" as directed by a professional chauffeur who was with him. Held that the plaintiff's intestate was actively in the exercise of due care.

Kaminski v. Fournier 235-51

Action for personal injuries against a town. Where an, ran off a public highway and over an embankment into a river because of absence of a sufficient railing.

Bond v. Billerica 235-119

Where the plaintiff was run into and injured by an, while crossing a street. Ruling as to due care of plaintiff properly refused.

Neafsey v. Szemeta 235-160

Where plaintiff was injured while riding on the running board of the defendant's motor truck. Negligence of the plaintiff for the jury. Plaintiff must prove that the driver of the truck was the servant of the defendant. Authority of the father of the defendant to direct the driver who was not in the employ of the defendant to operate the truck.

Coyne v. Maniatty 235-181

Action for personal injuries received when the plaintiff as he was crossing the street was run into by a motor vehicle of the defendant. Held that rulings requested as to the contributory negligence of the plaintiff properly refused.

Quinlan v. Hugh Nawn Contracting Co. 235-190

Collision between an, and a street car. Due care of the driver of the, and negligence of the motorman.

Wright v. Concord etc. St. Ry. 235-456

Where the plaintiff was injured by jumping from the rear seat of an, in which he was riding as the guest of the owner and driver at a double track grade crossing on seeing an approaching railroad train. Omission of the railroad to give the statutory signals. Negligence or want of due care of the plaintiff and the driver of the.

Fahy v. Director General of Railroads 235-510

Action to recover for the conscious suffering and death of the plaintiff's intestate resulting from a collision between a motor truck on which he was riding as an employee and a street car. Negligence of the motorman and of the plaintiff's intestate for the jury. Intoxication of the men on the truck. If the plaintiff's intestate was intoxicated and his intoxication contributed to the injury in any degree the plaintiff cannot recover.

Labreque v. Donham 236-10

Collision between an, and a street railway car. Negligence of the plaintiff and the motorman. No recovery by the plaintiff for injuries caused by a fall in a hospital after the accident.

Clayton v. Holyoke St. Ry. 236-359

Where a pedestrian was struck and injured by an, from behind while walking at night along the right hand side of a frozen country road. Due care of plaintiff and negligence of defendant for jury.

Alpert v. Ellis 236-404

Where girl about eleven years of age while crossing a street at a place where a walk had been constructed for pedestrians was struck and injured by an. Plaintiff held to have been in the exercise of due care.

Inangelo v. Petterson 236-439

The Commonwealth is not liable for personal injuries and damages resulting from a collision between the motor car of the petitioner and an iron horse placed across a part of a State highway.

Lemon v. Com. 236-599

Action for personal injuries and damages caused by the collision of an, and a street car. Held that the plaintiffs were not negligent in stopping the auto partly on the defendant's tracks in order to accommodate two guests one of whom was a paralytic the other being blind.

Fitch v. Bay State St. Ry.

237-65

Where the plaintiff's intestate was run into and killed by an, driven by a man who had the, in his possession and control for the purpose of repairing it. Held that the repairer was not the servant of agent of the owner of the, when the accident occurred

Whalen v. Sheehan 237-112

Collision between an, and a wagon. Due care of the plaintiff, negligence of the driver of the, and whether at the time of the accident the driver of the, was acting within the scope of his employment was for the jury.

Lewandowski v. Cohen . . . 237-125

Collision of two, near the intersection of an infrequently travelled lane and a much travelled avenue. Effect on his right of recovery of plaintiff's violation of the law of the road. Contributory negligence of the plaintiff for the jury.

Walters v. Davis 237-206

Where conductor and motorman were injured by a collision between a street railway car and a motor truck standing upon the street railway track in a "cut."

Lounsbury v. McCormick

237-328

Where a boy about four years old while riding with his father was injured by a collision between the, owned and driven by his father and the, of the defendant. The boy has no independent standing from his father so far as the matter of liability is concerned. The case of the boy and that of his father stand or fall upon the due care or negligence of the father. Both cases may be tried together as both are "persons injured." St. 1914 c. 553 construed.

Gallagher v. Johnson 237-455

Action for personal injuries received when an, in which the plaintiff was riding with her husband who owned and was operating it ran into a team upon the highway because he became blinded by a glaring head-

light upon an approaching electric street car of the defendant.

Tupper v. Union Street Railway

237-485

Where the plaintiff's testator was struck and killed by an, driven by an employee of the defendants. Held that a finding was warranted that the driving of the, was the act of a servant of the defendants and was within the scope of his employment.

French v. Manning 237-552

Where the plaintiff a boy of eleven years of age when riding on a bicycle was injured when the bicycle was run into from the rear by an, owned and operated by the defendant. City ordinance forbidding the use of public streets as playgrounds. Use of the street by the plaintiff as a traveler and not as a playground. Held that there was no violation of the ordinance.

Coope v. Scannell 238-288

Collision of two. Operation of his, by the defendant without number plates but having with the, a new registration receipt under St. 1909 c. 534 § 11. Held that the, was properly registered.

Evans v. Rice 238-318

Collision between an, truck and a locomotive of the defendant at a grade crossing both of the plaintiffs being employees of the owner of the truck one of them being employed as chauffeur. Liability of the defendant.

Morel v. N. Y. N. H. & H. R. R.

238-392

Where a child four and one half years old was knocked down and run over by a motor vehicle drawing a concrete mixer owned by the defendant. Held that there was nothing disclosed by the record from which an inference could be reasonably drawn that the plaintiff's injuries were caused by the negligence of the operator of the truck nor is there any other evidence of negligence of the defendant.

Jabbour v. Central Construction

Co. 238-453

Action for personal injuries received by the plaintiff when an, in which she was riding with her husband and which was driven by him was run into by an, driven by the defendant. Concurrent negligence of the defendant and the husband

of the plaintiff. Due care of the plaintiff.

McDonald v. Levenson... 238-479

Action for personal injuries caused by the plaintiff being run into by an, driven by an employee of the defendant. Due care of the plaintiff and negligence of the defendant's employee for the jury.

Noonan v. P. M. Leavitt Co.
238-481

IV Registration

By one part owner is not such, as will permit a lawful operation of the car by the unnamed and unrecorded co-owner.

Shufelt v. McCartin.... 235-122

Liability of a foreign corporation for the operation of an, upon a public highway in this state without being registered here. Corporation held not to be a "non-resident" within the meaning of St. 1914 c. 204 § 1. Knowledge of the unlawful use of such, by the defendant. Unlawful operation of such, by an employee of the defendant. Scope of his employment.

Gondek v. Cudahy Packing Co.
233-105

Held that the momentary act of the plaintiff's intestate in attempting to crank the truck did not make him an operator under St. 1915 c. 87 and the plaintiff there for was not prevented from recovering because the truck was operated contrary to law because a temporary number plate was used without authority.

Labrecque v. Donham... 236-10

Operation of his, by the defendant without number plates but having with the, a new registration receipt under St. 1909 c. 534 § 11. Held that the, was properly registered.

Evans v. Rice 238-318

See Agency V, 2. Bills & Notes IX By-Laws and Ordinances, Conspiracy Evidence I, 6, Insurance II, 1, Negligence III, C; III, 4, (a).

AUTOPSY

(No case found)

AWARD

See Arbitration.

BAGGAGE

See Carrier.

BAIL

(No case found)

BAILMENT

Vol. I, P. 36

A bailee of property who delivers such property to a person not authorized by the owner to receive it is liable to the owner for conversion whether he is negligent or not.

Blaisdell v. Hersum & Co. Inc.
233-91

BANK

Vol. I, P.36

I In General**II Bill****III Collection****IV Custom****V Insolvency****VI National Banks****VII Officers****VIII Stockholders****IX Winding Up****I In General**

A conservator may recover from a the amount of a deposit deposited with the, as such conservator and paid by the, without his consent and before the settlement of his account in the Probate Court to the executor of the estate of his deceased ward.

Day v. Old Colony Tr. Co.
232-207

Recovery by plaintiff trust company from the defendant trust of a sum of money taken from the plaintiff through a conspiracy and the use of a forged check by two bookkeepers one employed by the plaintiff the other by the defendant the money being used by the defendant's bookkeeper to cover an embezzlement of money by him from the defendant. A certain rule of the Clearing House had

no application because the forgery was not discovered in time.

Metropolitan Tr. Co. v. Federal Tr. Co..... 232-363

On facts, held not to be a holder in due course as against the payee of a note fraudulently negotiated to it by a third person who had received it conditionally from the payee. Merchants Nat. Bk. v. Marden Orth. etc., Co..... 234-161

Liability of a, for the payment of a check after receiving an order to stop its payment.

Tremont Tr. Co. v. Burack
235-398

Payment by the defendant of a check to the treasurer of the plaintiff corporation. Failure of the plaintiff to notify the defendant of any limitation by by-law or otherwise on the treasurer's authority to draw the money which he deposited. Held that the defendant was justified in assuming that the treasurer was authorized to draw checks against the account of the plaintiff.

Madeiran Alliance etc. Assoc. v. Lowell Tr. Co..... 237-89

II Bills

(No case found)

III Collection

(No case found)

IV Custom

(No case found)

V Insolvency

(No case found)

VI National Banks

(No case found)

VII Officers

Authority of assistant treasurer of trust company to sign an agreement extending the time of payment of certain mortgages.

Davis v. Tremont Tr. Co.
234-502

VIII Stockholders

(No case found)

IX Winding Up

(No case found)

See Bills and Notes IX, Interest I, Pledge, Receiver.

BANKRUPTCY

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Where defendant sets up a discharge in, as a defence the burden of proof is on him to show that the plaintiff had notice or actual knowledge of the proceedings.

Smith v. Hill. 232-188

The costs in a suit in equity to which a bankrupt would be real party should be awarded to his trustee in.

Loonie v. Wilson. 233-420

Bill to compel a reconveyance of real estate dismissed because the plaintiffs had conveyed the premises in order to hinder, defeat and defraud the creditors in, of one of the plaintiffs.

Dunne v. Cunningham. . . 234-332

Held that the plaintiff the trustee in, as well as the defendant to whom the bankrupt had conveyed the property in fraud of his creditors had an insurable interest in such property at the date of the policies and of the fire. The plaintiff if he does not insure has no right to the proceeds of the policies placed on the property by the defendant at its expense and for its sole benefit.

Underwood v. Winslow. . . 234-550

Unlawful preference. Where the bankrupt had made within four months prior to the filing of the petition in a partial payment on his unmatured note which was then held by the defendant. Held that the evidence did not warrant a finding that the defendant had reasonable cause to believe the bankrupt was insolvent when the payment on the note was made.

Cregg v. Puritan Tr. Co. 237-146

Where an insolvent husband assigned a life insurance policy payable to his wife as security for a loan. The husband remained insolvent and continued to pay the premiums due on the policy until his death. Dispo-

sition of the proceeds of the policy over and above the loan and interest between the administrator of the estate of the husband and the trustee in, of the wife.

Penn. Mutual Life Ins. Co. v. Hunt. 237-241

Bill to enforce the liability of an officer of a corporation for a debt of the corporation. The plaintiff's cause of action was not destroyed by the discharge in, of the corporation.

E. S. Parks Shellac Co. v. Harris 237-312

Suits in equity by a trustee in, to compel conveyance to him of certain parcels of real estate alleged to have been conveyed by the bankrupt to the three defendants his two daughters and the husband of one of the daughters without consideration and with the intent to hinder delay and defraud the bankrupt's creditors. Insolvency of the bankrupt during the period covered by the conveyances. Finding warranted that the conveyances were made by the bankrupt in accordance with a general plan or scheme of keeping the real estate beyond the reach of his creditors that they were made without consideration and with the knowledge of the respective defendants. If the conveyances were made with intent on the part of the bankrupt to defraud the creditors they are voidable.

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Held that the trustees in, succeeded to all the rights of the receiver as they existed at the time of the adjudication.

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The Superior Court has jurisdiction under St. 1913. C. 563 § 1 to proceed by indictment against one for bastardy.

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Society of Mutual Succor etc., v. Iacobe. 232-263

A designation by a beneficiary that payment should be made under his certificate to his "Intended wife" is valid under R. L. C. 119 § 6 "Intended wife" being comprehended within the general designation "betrothed."

Mace v. Ancient Order of United Workmen. 234-299

Construction of certain by-laws of the defendant fraternal, fixing the amount payable to the plaintiff at not to exceed \$5000 "unless loss of life shall have resulted from accident — to member while riding as a passenger on a passenger train and inside a passenger car thereof, which train or car was propelled by steam power or while such train was being operated by electricity in which case the amount so paid shall not exceed \$10,000." "The latter benefit does not extend to electric subways, tubes, trolley systems, independent third-rail systems or to any public conveyance whatsoever, other than steam

railroads, with or without electric terminal." The plaintiff when killed was "riding as a passenger on a passenger train and inside a car thereof — while such train or car was being operated by electricity" through the medium of a trolley system. The train was operated by a steam railroad portions of which were operated by electricity so transmitted. Held that on the facts in this case the plaintiff is entitled to the payment of a sum not exceeding \$10,000 and not limited to \$5000.

Archibald v. Commercial Travelers' Assoc. 238-168

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Edelstone v. Schimmel. . . . 233-45

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I In General

Construction of a provision in a promissory note that if the borrower should make an assignment for the benefit of his creditors the note should immediately become due and payable and that the bank holding such note might sell the collateral pledged to the payment of the note with interest thereon "to maturity."

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Liability of the defendants individually upon a promissory note signed by them as trustees of a voluntary association.

Adams v. Swig. 234-584

Promissory note construed. Time of and amount of partial payments. Word "payable" defined.

Beaman v. Gerrish. 235-79

Held that a certain instrument or "receipt" given by the purchaser of goods to the seller with two post-dated checks was not a promissory note.

Bergman v. Granstein. 235-378

The following instrument and one of like tenor held to be negotiable promissory notes. "On demand after date I promise to pay to the order of Ann Maria Sprague One thousand Dollars with interest at 8% per annum. In case of Mrs. Sprague's decease, the principal to be kept as a fund for the Baptist Society at Westminister, Mass., interest to go to Theodosia Miles Whitman; and in case of her decease, interest to go to said Baptist Society."

Goodfellow v. Farnham. 236-453

A note and mortgage of personal property given by the deceased to his mother for the purpose and with the intention of preventing his wife from reaching his property in any proceeding brought by her against him to secure her marital rights to support and maintenance is void as against her.

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Moss v. Copelof. 235-162

Held that the plaintiff being in possession of the note with the assent of her husband was entitled to maintain an, in her own name.

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Crowdis v. Hayward. . . . 233-377

As to whether or not there was any, for a draft given by an insurance company in settlement of a loss by fire.

Morrison v. Boston Ins. Co.
453-234

Held that two certain instruments as stated being negotiable promissory notes a declaration in an action on said notes need not set forth any.
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Where note is fraudulently negotiated to the plaintiff the burden is on the plaintiff to show that he had no actual notice or knowledge of the fraud.

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Orth. etc., Co. 234-161

On facts bank held not to be a holder in due course of a promissory note payable to the defendant who had indorsed the note in blank and delivered it conditionally to a third person by whom it was fraudulently negotiated to the bank. Evidence

showing the conditional delivery of the note to and the giving of a receipt by the third person to the defendant admissible.

Merchants Nat. Bk. v. Marden
Orth. etc., Co. 234-161

Plaintiff a holder for value of a note made by the defendant to the order of himself and endorsed in blank by himself and by two other persons who were husband and wife held entitled to recover on the note as against the defendant.

Leavitt v. Wintman. . . . 234-248

IX Indorsement

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An installment promissory note given in payment for goods to be used in carrying on a voting contest is not invalid. Held that an indorsee a holder in due course could recover on such note.

Whitman v. Fournier. . . 233-154

Recovery by the assignee of a negotiable promissory note who received it from an indorsee the said indorsee having taken the note in due course for a valuable consideration in good faith without any notice of fraud practised on the makers, as to signature of endorsee upon the assignment.

Dean v. Vice. 234-13

Of notes of a corporation by a married woman. Action by the trustee in bankruptcy of the "bank" in Michigan, which discounted the notes, against the administrator of the indorser. Where notes were dated at Denver, Colorado and were payable there held that it did not clearly appear that the obligation of the indorser first became complete by delivery of the notes in Michigan. Conflict of Laws.

Walling v. Cushman. . . 238-62

On the record the domicil of the endorser was immaterial.

Walling v. Cushman. . . . 238-62

Defendant estopped from setting up the claim that the, was made in Michigan.

Walling v. Cushman. . . . 238-62

At common law except where the contrary appears every, is presumed to have been made at the place where the instrument is dated.

Walling v. Cushman. . . . 238-62

Held that the plaintiff the indorsee of certain promissory notes given by the defendant to the indorser in payment of the balance of the purchase price of a motor truck was a holder in due course.

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BOARDING HOUSE KEEPER

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Mandamus will not lie to compel the appropriate public officers of the city of Boston to grant and approve permits to the petitioners to convey garbage through the streets of Boston.

Wheeler v. Boston. 233-275

Equity cannot enforce an order of the, to abate a nuisance on the defendant's premises where it does not appear in the proceedings that a "source of filth" or "cause of sick-

ness" existed on the premises of the defendant.

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I In General

As to the difference between a bail, and a recognizance.

National Surety Co. v. Nazzaro 233-74

To secure release from arrest on mesne process while not a good statutory, held to be a valid, at common law. Words "shall not avoid" in the condition of the, construed.

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Action on a probate, of a guardian of an insane person held to have been prematurely brought.

McIntire v. Ensire. 232-83

Where a, was given, to secure the payment of a note it was held that the existence of the note was a prerequisite to the liability of the surety on the.

Burdett v. Walsh. 235-153

Action by a surety company to recover premiums alleged to be due on a construction. Waiver by plaintiff of its right to collect premiums until it received written notice of the completion of the contract, or after the date of the actual completion of the work.

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No recovery where horse stepped on a spike while on a bridge in. Manner of accident a matter of conjecture.

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Mandamus will lie to compel recognition as members of the Boston Firemen's Relief Fund of employees in the repair and construction division, veterinary service, and fire alarm branch of the fire department.

Nolan v. Boston Firemen's Relief Fund 236-420

Suit in equity by the city of, against the Treas. and Receiver General the Boston Elevated Railway Company and the trustees who are operating that railway under Spec. St. 1918 C. 159 to have certain provisions of that act declared unconstitutional and void as against the city of, and to prevent the assessment upon that city of any part of the amounts paid under the act by the Commonwealth to the railway company to make up the deficiency between its revenues and expenses. Held that C. 159 violates no constitutional rights of the city of, and the bill sets forth no ground for relief.

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Abandonment by a contractor of a public work i. e. an addition to the, Public Library. Suit by a sub-contractor to reach and apply in satisfaction of a claim for labor performed or furnished and for materials used by the plaintiff as such sub-contractor in

the erection of such addition, cash and bond security held by the city of, in accordance with the provisions of the statute. Intervention of numerous other sub-contractors.

Otis Elevator Co. v. Long 238-257

Action under R. L. C. 211 § 8 for three fourths of the value of property alleged to have been stolen during a riot. Held that the defendant city was not liable.

Yalenezian v. Boston . . . 238-538

Writ of prohibition denied to restrain the respondents as members of the city council of the city of, from continuing to hold a hearing upon charges against the petitioner a veteran employee of the city of.

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**BOSTON CHAMBER
OF COMMERCE**

Bill in equity brought by certain "certificate holding" members of the, for themselves and certain other individuals against the, and a number of individuals including the officers, directors and trustees of the, seeking to restrain the purchase by the trustees of certificates of membership beyond those then held by them and from voting at corporation meetings upon those which they already held.

Tapper v. Boston Chamber of Commerce 235-209

The, is not a business corporation.
Tapper v. Boston Chamber of Commerce 235-209

Right of directors of the, who were not "certificate holders" to vote as directors upon matters relative to the management of the property of the corporation.

Tapper v. Boston Chamber of Commerce 235-209

Rights and duties of trustees to acquire, hold and vote certificates of membership besides "excess certificates."

Tapper v. Boston Chamber of Commerce 235-209

BOSTON AND MAINE RAILROAD

Bill by two minority stockholders to review, annul, modify or amend an order of the public service commission for the consolidation of the railroad companies constituting the system and a plan for the reorganization of that system dismissed.

Brown v. B. & M. R. R. 233-502

Held that where certain notes of the, were sold for cash and the proceeds all went into the treasury of the, such notes constituted a valid debt of the.

Brown v. B. & M. R. R. 233-502

Validity of the purchase by the, of shares of stock in its leased and subsidiary lines.

Brown v. B. & M. R. R. 233-502

Issue of new stock by the, in consolidation and reorganization proceedings. Approval of Public Service Commission. Approval of Boston Railroad Holding Company. Voting by proxy by the directors of the Holding Company.

Brown v. B. & M. R. R. 233-502

No vested right in stockholders to subscribe for new stock.

Brown v. B. & M. R. R. 233-502

Injunction granted enjoining the defendants from conducting a local express business between certain points on the, because of violation of reasonable rules and regulations of the plaintiff and of the contract between the plaintiff and the defendant corporation. Equality of terms given to different express companies.

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Petition for the appointment of commissioners to provide for the construction and apportionment of the cost of the West Springfield. Hearing on appeal from decree denying motion for recommitment of report of commissioners and objections to its confirmation. Scope of and what is required, to be stated in the report.

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Apportionment of expense of rebuilding a, over a railroad between the railroad and the town.

Selectmen of Brookline Petitioners
236-260

Where plaintiff's intestate was killed while travelling across a. Held that there was no evidence that the, was defective.

Braley v. Mass. Northeastern St.
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Execution of a written agreement of sale by a real estate, employed by the seller acting as agent for the purchaser.

Dooley v. McDonough. . . 233-77

II Authority

Sale of a "forty acre farm" by a firm of real estate brokers. Held that they were given, by the defendant to sell a "forty acre farm" in P. that they had the power to agree to sell the entire forty acre farm and that the defendant was bound by the agreement made by them in accordance with such powers.

Danforth v. Chandler. . . 237-218

III Commissions

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Action by a, to recover a commission for procuring a lease of the de-

fendant's real estate. Certain evidence admissible to show that the taking of the lease was not procured by the plaintiff.

Cesana v. Johnson. 232-444
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Guild v. Sampson. 232-509

In an action by a real estate, to recover a commission held findings warranted that the plaintiff was not the efficient cause of bringing about the sale.

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234-128

Action by a, to recover a, on the sale of real estate owned by the petitioner a married woman.

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Action by a real estate, to recover a, for procuring a customer to purchase real estate of the defendant. The plaintiff in order to recover must produce a customer ready, willing and able to become the purchaser of the premises on the defendant's terms. Discharge of the, before the customer had finally and definitely accepted the terms of the agreement of conveyance presented by the defendant.

Doten v. Chase. 237-218

Held action to recover a, upon an exchange of real estate. Held that the plaintiff was not entitled to recover where the defendant was induced to enter into an agreement of exchange, which he afterwards repudiated by a false representation of a material fact made by the customer procured by the plaintiff.

McCarthy v. Reid. 237-371

Action by a, to recover a, for procuring a tenant for a portion of a building owned by the defendant the title to which standing in the name of the defendant's half sister. Not necessary that defendant should be the owner of the property. Agreement made to make a lease "satisfactory to both parties." The circumstance that the parties failed to carry out the agreement by executing a lease in accordance with its terms does not affect the right of the plaintiff to receive a. The fact that after the alterations provided for in the agreement had been made the premises could not legally be occupied by the proposed tenant because

contrary to St. 1907 C. 550 does not affect the plaintiff's right to recover a commission. Statute of Frauds does not apply to an agreement between the plaintiff and the defendant. Stipulation entered into by the parties through their counsel held to be binding upon the parties. Judgment for the plaintiff.

O'Neil v. Reardon 238-120

Action for commission alleged to be due for procuring an exchange of real estate. The agreement of exchange contained a provision to pay the plaintiff a certain amount as a commission but contained no provision as to the effect upon the rights of any party of a failure or inability to give title. The exchange was not effected because of objections as to titles by both owners. No time was fixed by the agreement for payment of the commission; hence the amount was payable on demand; and the bringing of an action to recover the amount constituted a demand. An oral understanding between the parties at the time of the execution of the agreement as to the payment of the commission is of no effect to modify or control the terms of the agreement. Judgment for plaintiff.

Spevack v. Budish 238-215

Finding warranted that the plaintiff had procured a customer known and acceptable to the defendant for a price for which he had authorized the sale of the property. Held that other evidence was not necessary to prove that the customer was ready able and willing to purchase.

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IV Double Employment

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BROOKLINE

Apportionment of expense of rebuilding a bridge over a railroad between the railroad and the town of. Selectmen of Brookline Petitioners

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BUILDING

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Held that an elevator contractor

could not recover from the general contractor for work and labor done in the removal of boulders and stones because the provision for "extra compensation," applicable to such work was not included in the contract as finally made. Order given by a representative of the defendant to the plaintiff's agent to remove the rocks does not affect the rights of the parties.

Hodgkins v. Charles E. Currier Co. 232-528

Action on a contract to recover for the furnishing of all material and labor used in the construction of an apartment house. Waiver of final certificate of architect. Furnishing of material not according to sample. Delay in the completion of the contract caused by other contractors.

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BUILDING ACT AND BUILDING LAWS

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234-301

A statute authorizing cities and towns by ordinance or by-law to restrict buildings to specified parts according to their construction or use is constitutional.

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Damages in an action for trespass upon a family cemetery.

Bowen v. Jones 234-90

Bill to terminate a trust created by a will for the preservation by a town of a monument to be erected by the testator's executor and for the care and beautifying of the testator's lot in the cemetery, dismissed.

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Opinion of the Justices . . 232-605

A person carrying passengers for hire from a city in another state to a city in this commonwealth is engaged in interstate commerce and cannot be prosecuted under a, of a city which provides for the licensing of passenger carrying vehicles.

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Effect of city ordinance prohibiting coasting on certain streets.

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Validity of city ordinance concerning the licensing and operation of motor vehicles for hire.

Burgess v. Mayor etc. of Brockton 235-95

A by-law of a town regulating grants of money in excess of a certain amount held to be more than a mere rule of parliamentary law.

Loring v. Westwood 238-9

A by-law of a town cannot be overridden at the behest of a majority of the voters present at a town meeting in the absence of an article in the warrant under which such action could be taken.

Loring v. Westwood 238-9

Where a boy was injured while riding on a bicycle on a public street. Held that there was no violation of a city ordinance forbidding the use of the public streets as playgrounds.

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Disposal of land on the Charles River called "The Front" taken by the city of, for a park and not longer needed for such public use.

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The requirement of acceptance of Spec. St. 1917 C. 223 by the city council of, before it should become operative is constitutional. The provisions of the statute permitting the city council of, to pass the decisive vote altering the use of the land in question from public to private purposes is constitutional.

Wright v. Walcott.....238-432

The income received from the rental of the land must be devoted solely to public uses.

Wright v. Walcott.....238-432

Bill in equity by ten taxable inhabitants to prevent the extending of M. street as a public way to facilitate the leasing of land. "The Front" so called, heretofore taken for a public park. Bill dismissed.

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I In General

Defendant express company enjoined from conducting a local express business on the Boston and Maine Railroad because of violation of reasonable rules and regulations of the plaintiff and of the contract between it and the plaintiff.

Director Gen'l of R. R. v. Peoples Express Inc.235-199

II Animals

Action against an express company for damages resulting from delay in transporting horses from another state to this state. Defendant to deliver horses within a reasonable time. An order of the United States Fuel Administration offered in evidence properly excluded. Conversations between employees of the plaintiff and agents of the defendant admissible. Hypothetical question asked a veterinarian should have excluded. Finding warranted that defendant had been guilty of inexcusable delay.

Clapp v. Amer. Express Co.234-174

Action by railroad to recover for money paid by it for the feeding and bedding of carloads of live stock consigned to the defendant and being transported by it.

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In an action for damage done to a harp checked as, held that a certain

provision of the tariff did not exonerate the defendant railroad from all liability if the tarp was damaged through the negligence of its employees. Plaintiff is bound by a "release" executed by her limiting the liability of the defendant.

Perkins v. N. Y., N. H. & H. R. R.
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IV Delivery

By the seller to a, other than the one named by the buyer as a defence in an action for goods sold and delivered.

St. John Bros. Co. v. Falkson
237-399

Action against a, for failure to carry safely and deliver to the plaintiff certain merchandise. Held that the burden of proving the non-delivery of the freight rested upon the plaintiff.

Nollman v. N. Y. N. H. & H. R. R.
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V Freight Charges

Consignor held to be liable to railroad for, although the railroad had delivered to the consignee a number of carloads of goods without collecting the Equitable estoppel no defence.

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A railroad is liable for conversion for delivery of property to the consignee without the plaintiffs' indorsement upon the bill of lading as required by its terms. Plaintiff is not required to accept the consignee's check either in payment or partial payment.

Keystone Grape Co. v. Hustis
232-162

Express company held liable for damages resulting from the breaking while in transit of a plaster of Paris model of a bust caused by the negligent handling of the case in which the model was packed.

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Of, for loss by leakage in a shipment of goods by water.

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X Servants

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XI Successive Carriers

The responsibility of the terminal is the same as that of the initial. Any valid limitation under the bill of lading issued by the initial ensures to the benefit of the terminal.

Florida Cotton Oil Co. v. Clyde Steamship Co. 235-10

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Opinion of the Justice.... 234-612

As to the power of the, to constitute a city government in a town. The town must first make an application to the, by a vote of its inhabitants and if an act of incorporation is passed pursuant to the application such act must be submitted for ac-

ceptance to the inhabitants. Held that Special Statute 1917 C. 289 incorporating the city of Methuen was unconstitutional.

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St. 1916 C. 293 § 1 as to licensing by cities and towns of motor vehicles to operate for hire is constitutional. *Burgess v. Mayor etc. of Brockton* 235-95

St. 1912 C. 700 regulating the practice of optometry is a valid exercise of the police power and violates no provision of our Constitution or of the Federal Constitution.

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As to the validity of an excise tax upon a foreign Corporation engaged in interstate commerce. St. 1909 C. 490 P. III § 56.

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Constitutionality of St. 1919 C. 314 providing for the distribution of the income tax among the several cities towns and taxing districts. *Duffy v. Treas. & Receiver Gen'l.* 234-42

Dane v. Treas & Receiver Gen'l. 236-280, 237-50

Towns and cities have no inherent power to levy taxes but can exercise only those powers to tax which are delegated to them by the commonwealth.

Duffy v. Treas. & Receiver Gen'l. 234-42

The provisions of St. 1919 C. 314 do not violate the general principle of the law of, that the people of one district cannot be taxed for the benefit of another district.

Duffy v. Treas. & Receiver Gen'l. 234-42

St. 1918 C. 253 as to, on the income of foreign corporations is not in violation of the Federal constitution and does not impose a direct burden upon interstate commerce.

H. P. Hood & Sons v. Com. 235-572

There is in St. 1918 C. 207 as here construed nothing violative of the constitutional rights of executors and administrators.

Wheelwright v. Tax. Comm'r. 235-584

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American Uniform Co. Inc. v. Com. 237-42

St. 1907 C. 563 (legacy and inheritance tax) is constitutional.

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Constitutionality of St. 1919 C. 363, St. 1916 C. 269 and St. 1919 C. 324 respecting the assessment of and distribution among the several cities and towns of the income tax. The tax assessed under the provisions of St. 1916 C. 269 § 2, 5 (b), and St. 1199 C. 324 is not a betterment tax. The additional tax authorized by St. 1919 C. 324 is a general tax.

Knights v. Treasurer & Receiver Gen'l. 237-493

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Tucker v. Columbian Nat. Life Ins. Co.....232-224

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Donham v. Public Service Commissioners.....232-309

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As to giving "full faith and credit" to the judgment of the court of another state.

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R. L. C. 152 § 35 relating to the validity of a foreign divorce does not violate any provision of the.

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Arizona Mining Co. v. Iron Cap Copper Co.....236-185

St. 1908 C. 542 amending St. 1906 C. 463 P. 1, § § 23,25 (construction, maintenance and repair of railroad bridges) is not obnoxious to the provisions of either the, or the State Constitution.

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Excise tax on foreign corporations. St. 1918 C. 235 providing "that for the purpose of assessing the excise upon corporations whose stock was issued without a par value one hundred dollars shall be consider par" is not in violation of the.

American Uniform Co. Inc. v. Com.....237-42

The excise tax known as the war bonus taxes levied on foreign and domestic corporations under St. 1918 C. C. 253, 255, as revived and re-enacted by St. 1919 C. 342 is not violative of the.

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1 ASSENT

The parties to a written contract can change it by a subsequent written instrument or by oral agreement.

Gilman & Son Inc. v. Turner Tanning etc. Co. 232-573
 Gallner v. Wm. W. Babcock Co.
 237-265

Held that the plaintiff had assented to and accepted the contract and was bound by its terms although the contract was not signed by the plaintiff.

Putnam Machine Co. v. Mustakangas. 236-376

Held that there was evidence sufficiently explicit to support a finding that a contract actually was made in substance as testified by the plaintiff.

Noble v. Mead-Morrison Mfg. Co.
 237-5

Specific performance of an alleged contract to purchase real estate as evidenced by certain letters between the defendant's broker and the parties. Held that the minds of the parties never met respecting the purchase and sale of the estate and that no agreement binding the defendant was entered into.

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2 DELIVERY

Held on facts stated that the time of, of the goods under the contract had been changed by mutual agreement.

Ginz v. Axelrod 235-143

3 IMPLIED

Held that there was no, promise on the part of the defendant the the construction mortgagee to pay the plaintiff for materials furnished and labor performed by it in the erection of a garage on the mortgaged premises.

Zemier & Co. Inc. v. Beacon Invest. Assoc. Inc. 232-507

There is no, that the plaintiff, who at the request of his brother-in-law supported his mother-in-law is to be paid by the brother-in-law for her support.

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Failure of the plaintiff corporation to notify the defendant bank of any limitation by by-law or otherwise on its treasurer's authority to draw the money which he deposited. Held that the defendant was justified in assuming that the treasurer was authorized to draw checks against the account of the defendant.

Maderian Alliance etc. Assoc. v. Lowell Tr. Co. 237-89

Right of the assignee of a construction loan agreement to recover for labor and materials furnished by him. Admissibility of certain evidence as stated upon the question as to whether there was an, between the parties. Held that no valid agreement was entered into between the parties. Held that there was no, on the part of the defendant to pay for the labor and materials furnished by the plaintiff.

Albert v. Boston Mortgage Bond Co. 237-118

4 OFFER

a Generally

If a definite, is made to purchase property for a specific sum of money it is to be presumed to be an, of that amount in cash where no other method of payment is referred to.

Lawrence v. Rosenberg . . . 238-138

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Specific performance of an alleged contract to purchase real estate as evidenced by certain letters between the defendant's broker and the parties. Held that the plaintiff was not entitled to specific performance unless an enforceable contract is shown by the letters.

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Held that certain letters constituted a contract between the parties.

Reliance Waste Co. v. Waterhead Mills Inc. 238-496

5 PARTIAL EXECUTION

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Held that there was no testimony tending to show an agreement authorizing the plaintiff to rebuild or construct the appliances.

Trumbull v. Plymouth Mills
232-546

Execution of a written, of sale by a real estate broker employed by the seller acting as agent for the purchaser.

Dooley v. McDonough . . . 233-77

II Consideration

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An action for breach of contract cannot be maintained against a treasurer of a corporation on his promise to turn over to the plaintiff certain checks as such promise is without.

Crohon & Roden Co. L't'd. v. Rudnick. 232-555

An oral agreement by a judgment debtor to pay the judgment creditor a certain sum of money in satisfaction of the judgment creditor's execution against her and an execution against her husband was a sufficient, for a valid agreement by the judgment creditor to discharge her own debt.

Barnett v. Rosen 235-244

Forbearance by the plaintiff's to place a mechanic's lien on the premises of the defendant is a legal, for the defendant's promise to pay the plaintiffs the value of certain labor furnished by them.

Manson v. Flanagan 233-150

Held that because of a certain clause as stated the agreement was void in its inception for want of mutuality and that it did not become an agreement for a good, because of the delivery and acceptance of part of the goods called for by the agreement.

Bernstein v. W. B. Manuf. Co.
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III Construction

1 GENERALLY

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In an action for breach of contract held the contract of the defendant granted a license to the British Corporation and was not a sale of the "filler business."

Arnold v. North American Chemical Co. 232-196

Of a contract for the sale a carload of sardines. Words "September shipment or no sale" construed.

Letts-Parker Grocer Co. v. Marshall & Co. Inc. 232-504

Of an agreement contained in a letter from a promoter of mining companies to a mining engineer. As to certain shares of stock to be received by the engineer in addition to a stated salary. Held that no partnership or fiduciary relation was created by this agreement.

Ross v. Burrage. 233-439

And validity of an agreement between three persons who constituted all the directors of a corporation relating to the termination by one of them of his active connection with the corporation.

Moss v. Copelof. 235-162

Finding warranted that the contract between the parties was not wholly embodied in the defendant's letter confirming the plaintiff's order.

Samuels v. W. H. Miner Chocolate Co. 235-312

Of word "sometime" in a contract to deliver to be made.

Bernstein v. W. B. Manufacturing Co. 235-425

Of a contract of indemnity between a contractor and a railroad on account of work in the abolition of a grade crossing.

B. & M. R. R. v. T. Stuart & Son Co. 236-98

Of a contract to convey lands at any time within twenty-five years and not to dispose of or in any way injure or encumber said premises before the expiration of said period of twenty-five years.

Eastman Marble Co. v. Vermont Marble Co. 236-138

Of an agreement between the owner of land bordering on the thread of a stream and the owner of a dam across the stream where the land was taken for the purposes of a water supply. Held that the agreement was not a personal contract between the parties and that the covenants contained therein ran with the land.

Battelle v. Worcester. . . 236-395

Held that a certain agreement as stated was not a mere option but one

of purchase and sale binding on all the parties.

Morgan v. Forbes. 236-480

Of a contract for the sale and delivery of a certain quantity of coal. Words "fair proportion."

Wellington Piano Case Co. v. Garfield etc. Co. 236-544

Where the contract is an oral one and the testimony was conflicting the ascertainment of the contract as actually made must be left to the jury.

Noble v. Mead-Morrison Mfg. Co. 237-5

Held that an oral contract by the defendant to pay the plaintiff for his services in procuring a government contract for the defendant was not vague uncertain or meaningless.

Noble v. Mead-Morrison Mfg. Co. 237-5

Of a certain agreement particularly in reference to the defendant's obligation to deliver oil barrels to the plaintiff. Words "willing to ship."

Brodsky v. Geo. H. Morrill Co. 237-86

Where the language of a contract is open to doubt and the parties to it have adopted and acted upon a particular, such, will be considered as of great weight by the court and will usually be adopted by it.

Crowe v. Bixby. 237-249

Where the defendant was to be paid a commission by the plaintiff on each of a certain kind of machines "purchased" by the plaintiff from a manufacturing corporation. Held that although the plaintiff "ordered" a number of the machines of the manufacturing corporation none were "purchased" within the meaning of the contract and no commissions therefor were payable to the defendant.

Brokaw-Eden Mfg. Co. v. Lockerie. 237-463

Of an agreement to dissolve a partnership. Parol evidence is admissible to explain the meaning of the trade terms "closed contracts" and "commission contracts."

Linton v. Noonan. 238-31

Where the contract of sale is in writing and the attendant circumstance are not in dispute the, of the

contract is for the court and not for the jury.

Reliance Waste Co. v. Waterhead Mills Inc. 238-496

2 DEPENDENCY

(No case found)

3 ENTIRETY

Held that a written contract for the improvement and cultivation by the defendant of land of the plaintiff was entire and not divisible.

Potter v. Starratt. 235-325

4 JOINT OR SEVERAL

(No case found)

5 PARTICULAR AGREEMENTS

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IV Discharge

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V Merger

(No case found)

VI Performance

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1 GENERALLY

Where the defence to an action for breach of a, of employment was the disobedience by the plaintiff of certain orders given by the defendant it was held that a motion of the defendant, for the ordering of a verdict in his favor was rightly denied.

Hanneman v. I. Shlivek & Sons Inc. 235-317

Held that the defendant was not obliged to account for the moneys paid to him by the plaintiff so long as he was in good faith endeavoring to perform his contract as required by the terms thereof.

Potter v. Starratt. 235-325

Specific, of a written contract for the sale and conveyance of real estate denied where the buildings were partially destroyed before the time fixed for the, of the contract. Recovery by defendant of money paid by him on account of the contract.

Libman v. Levenson. . . 236-221

Held that the plaintiff was entitled to recover damages for the

defendant's failure to deliver coal to the plaintiff under a contract of sale.

Wellington Piano Case Co. v. Garfield etc. Co. 236-544

Unreasonable determination of a building contract by the defendant after the partial, of the contract by the plaintiff. Bad faith of the plaintiff who had departed from the contract in two particular things not trivial. Plaintiff's right of recovery.

Lynch v. Culhane. 237-172

Action of contract against an express company for failure to transmit money to the plaintiff's sister who resided in Russia. Certain provisions in the contract between the parties exonerating the defendant from liability not invalid because the plaintiff could not read English.

Alemian v. Amer. Express Co. 237-580

Action on a written contract for the alteration of a building to recover for work done and materials furnished. Held that the contract was substantially performed.

D'Urso v. Leone. 238-58

Action for failure to comply with a contract for making machine parts. As to interest due the plaintiff on his investment in the machine.

Gale v. Dwyer. 238-509

2 BREACH

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Of contract to execute a Steel Plate Portrait.

American Historical Society Inc. v. Storer. 232-372

Action for, of several written contracts to furnish to the plaintiff films of moving pictures for exhibition in his theatre.

Orbach v. Paramount Pictures Corp. 233-281

Of an agreement to deliver a certain quantity of rice. Measure of damages.

Antonacopoulos v. Arax Grocery Co. Inc. 234-125

In an action for, of, to purchase certain stock held that the plaintiff had failed to show a, of the, and that the defendant had fulfilled his part of the.

Bendsley v. Lovell. 235-133

Finding warranted that the plaintiff had broken the contract, that his, went to the essence of the contract, and that it justified the defendant in cancelling the rest of the order.
Samuels v. W. H. Miner Chocolate Co......235-312

In an action for, of, by an inventor against a corporation it was held that the declaration set out no cause of action.
Beaudry v. Hamel Shoe Mach. Co......235-503

Of contract of indemnity between a contractor and a railroad on account of work in the abolition of a grade crossing.
B. & M. R. R. v. T. Stuart & Son Co......236-98

Of contract of employment. Recovery in a prior action on the same contract.
Dalton v. American Ammonia Co......236-105

Damages for, of, by the defendant to furnish ice to the plaintiff a milk company. Diligence of the defendant in obtaining the usual supply of ice.
Curtis v. Boston Ice Co.....237-343

Of a written agreement of sale of a "gas fired steam boiler." Defence of false representations made by the seller.
Boston Consolidated Gas Co. v. Folsom.....237-565

Action on a contract between the parties whereby the plaintiff dealer was given the right to sell certain automobile trucks manufactured by the defendant in a certain territory the plaintiff agreeing to purchase a certain number of trucks the first year. Failure of plaintiff to purchase the required number of trucks. Surrender of the contract. Judgment for the defendant.
Vim Truck Co. v. Vim Motor Truck Co......238-68

Action of damages for breach of contract unperformed in part. Contract by defendant to furnish plaintiff 50 bbls. of refined lime juice in 5 bbl. lots on or before a time stated. Demand on defendant within the time stated for the balance of the goods then undelivered. Oral agreement of the parties to extend the time for delivery. Held that the parties could orally modify the time

and manner of performance fixed in the contract.
Walker Bros. Co. v. Cox 238-211

Action for, of an oral promise by defendant's intestate to convey transfer or leave a certain parcel of real estate to the plaintiff in consideration of the plaintiff's making a home for and taking care of the defendant's intestate and his brother as long as they lived. Right of plaintiff to recover for services actually rendered. Liability of defendant. Statute of Frauds.
Donovan v. Walsh.....238-356

Action of damages for breach of a contract for the sale of goods. Authority of one M. to make the sale as agent for the defendant.
Jacobson v. Perman.....238-445

Of a contract for the purchase and sale of a store. Held that the defendants committed a, of the contract by failing to be present at the time and place appointed ready willing and able to perform their part of the contract and they would have been liable to the plaintiff by reason of that breach even though the plaintiff had refused to accept tender of performance made by them on the next day.
Freeman v. Robinson.. 238-449

Of contract of sale made by letters between the parties.
Reliance Waste Co. v. Waterhead Mills Inc......238-496

Of teaming contract. No recovery for horses bought, especially for use in connection with the defendant's business which the plaintiff sold at a loss.
Mt. Pleasant Stable Co. v. Steinberg.....238-567

3 CONDITION

Where the evidence shows that the plaintiff did not fulfill the, of the special contract as set forth in her declaration she cannot recover.
Jewett v. Warriner.....237-36

4 IMPOSSIBILITY OR ILLEGALITY

Contract for the sale and delivery of a certain quantity of coal. Defendant is not liable where the delay in delivering the coal was caused entirely by a railroad embargo.
Wellington Piano Case Co. v. Garfield etc. Co......236-544

5 PLACE

(No case found)

6 PREVENTION

(No case found)

7 QUANTITY AND QUALITY

Held that the defendant the owner of an automobile was liable to the plaintiffs for the making over of the automobile where no stated price was agreed upon and where the defendant knew of the work being done by the plaintiff and gave them no directions to discontinue further work although the expense of such making over of the automobile was more than it originally cost.

Horton v. Phillips. 238-7

8 REFUSAL

(No case found)

9 SATISFACTION

(No case found)

10 TIME

Held defendant could terminate the contract upon reasonable notice to the plaintiff where there was no agreement express or implied between the parties as to the, for which the contract would run.

Emerson v. Ackerman. . . . 233-249

Held that the parties could orally modify, the, and manner of performance fixed in the contract.

Walker Bros. Co. v. Cox 238-211

Action for failure to comply with a contract for making machine parts. Damages caused by the defendant's unreasonable delay. Damages for unnecessary, employed by the defendant in performance of the contract.

Gale v. Dwyer. 238-509

11 WAIVER

Finding warranted that the defendant had waived the notice given to terminate the contract.

Emerson v. Ackerman. . . 233-249

Held that the acceptance by the plaintiff of the proposal of the defendant that the plaintiff should "Hold goods in . . . until we advise you further" operated as waivers of the

obligation of the defendant to order out and of the plaintiff to make delivery "F. O. B. P —" as a condition of the passing of title.

Empire State Pickling Co. v.
Empire Grocery Co. 235-418

Contract by the defendant to build one hundred and fifty cottages or camps for the plaintiff. Duty of the plaintiff to point out sites to the defendant. The failure of the plaintiff to seasonably give the defendant the locations held to be a, by the plaintiff of the performance of the defendant's obligation within the time stipulated in the contract.

Surbarban Land Co. Inc. v. Brown
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VII Rescission

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1 GENERALLY

Conduct of the defendant in trying to take advantage of a clerical error in the sales slip constituted a repudiation of the only contract made.

Edelstone v. Schimmel. . . . 233-45

Of a contract upon reasonable notice given by defendant to plaintiff when.

Emerson v. Ackerman. . . . 233-249

By plaintiff of a purchase of shares of stock for misrepresentations and fraud on part of the defendant.

Loomis v. Pease. 234-101

Held that the plaintiff did not elect by recovery in the first of two actions brought by him on a contract of employment to consider the contract as terminated.

Dalton v. American Ammonia
Co. 236-105

A wrongful and entire failure by the defendant to perform the contract authorized its, by the plaintiff and entitled him to recover the amount paid upon a count for money had and received.

Cohen v. Wintman. 236-471

Unreasonable determination of a building contract by the defendant after the partial performance of the contract by the plaintiff. Plaintiff's right of recovery.

Lynch v. Culhane. 237-172

Sale by the plaintiff to the defendant of a "gas fired steam boiler."

Defence of false representations made by the seller. Held that the representations relied on by the defendant at most were only expressions of opinion, judgment or estimate, upon which he cannot rely as a ground for, of the contract.

Boston Consolidated Gas Co. v. Folsom.....237-565

2 RESTITUTION

Plaintiff must make a tender of all dividends received on the shares as well as the shares themselves before he can maintain an action to recover the purchase price of the shares of stock.

Loomis v. Pease.....234-101

VIII Validity

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1 GENERALLY

A written contract is not void because it may be obscure or difficult of satisfactory construction. It can be enforced unless it is wholly unintelligible.

Letts-Parker Grocer Co. v. Marshall & Co. Inc.....232-504

Of agreements made pendente lite between plaintiff and defendant.

Bearse v. Lebowich.....234-492

A contract susceptible of two meanings one lawful and the other not will be supported rather than defeated.

Eastman Marble Co. v. Vermont Marble Co.....236-138

Contract of apprenticeship held to be valid at common law.

Putnam Machine Co. v. Mustakangas.....236-376

The, of "the contract declared on" in an action for work and labor performed cannot be set up under an answer of general denial.

Whittingslow v. Thomas 237-103

2 PUBLIC POLICY

An agreement limiting the liability of a bank for the payment of a check after receiving an order to stop its payment held not to be illegal or contrary to.

Tremont Tr. Co. v. Burack 235-398

Where the facts are not in dispute the question whether a, is against, is

a question of law under all the circumstances of the particular case.

Adams v. East Boston Co. 236-121

A contract to pay the plaintiff for services to be rendered in the use directly or indirectly of improper influence or practices upon members of the Legislature to whom a propose statute is to be presented as unenforceable because contrary to.

Adams v. East Boston Co..236-121

A certain contract to convey lands at any time within twenty-five years and not to dispose of or in any way injure or encumber said premises before the expiration of said period of twenty-five years is in violation of the rule against perpetuities is an illegal restraint upon alienation is against, and void.

Eastman Marble Co. v. Vermont Marble Co.....236-138

An express oral contract to pay the plaintiff for his services in procuring for the defendant a contract from the British Government for the manufacture of shells held not to be illegal as against.

Noble v. Mead-Morrison Mfg. Co. 237-5

An agreement to waive the right in equity to redeem the mortgage made at the time the equitable mortgage was executed is void as against.

Southwick v. Bigelow.... 237-299

3 RESTRAINT OF TRADE

Agreement by the defendant a garage proprietor with the plaintiff a dealer in oil to use equipment loaned to him by the plaintiff for the sole purpose of selling gasoline purchased by him of the plaintiff held not to be invalid as a contract in.

Quincy Oil Co. v. Sylvester 238-95

IX Waiver

See VI Performance 2 above.

Held that findings were warranted that the terms of an order on the defendant the construction loan mortgagee given by the owner of the real estate to the plaintiff a painter were modified by the consent of all the parties in interest and that the

conditional acceptance of the order by the defendant had been waived.
Gallner v. Wm. W. Babcock Co.
 237-265

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CONVICTION AND SENTENCE

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- II Additional Punishment**
- III Lesser Offense**
- IV Sentence**

I In General

(No case found)

II Additional Punishment

(No case found)

III Lesser Offense

(No case found)

IV Sentence

Where defendant was convicted on two counts for larceny from two persons one individual being named in each count. Held there was no error of law where the defendant was sentenced for both offences to confinement in the House of Correction for thirty months.

Lebowitch Pet'r.....235-357

The judge is not obliged to state his reasons for refusing to grant a stay of execution of.

Lebowitch Pet'r.....235-357

Where the petitioner was sentenced to imprisonment in the Massachusetts Reformatory. Removal of the petitioner on warrant of the commissioner of correction to the House of Correction. Release of the petitioner by vote of the Board of Parole. Revocation of the petitioners permit to be at liberty. Apprehension of the petitioner and his conveyance to the Massachusetts Reformatory there to serve the term of his original.

Kozlowsky Pet'r.....238-532

The violation of terms or conditions under which a person is released from imprisonment renders the permit void while it may be revoked with or without cause shown.

Kozlowsky Pet'r.....238-532

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COPYRIGHT

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CORPORATION

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- VIII Liability**
- IX Meetings**
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- XII Subscriptions**
- XIII Transfers and Shares**
- XIV Ultra Vires**

I In General

At common law the capacity to form a partnership is not an inherent power.

Hosher-Platt Co. v. Miller 238-518

II Action

Bill by a judgment creditor of a, to reach and apply property of the the defendant alleged to have been fraudulently conveyed by it to another, with the intent to prevent the plaintiff from obtaining satisfaction of his judgment.

Schurman v. Improved Plastic-Slate Roofing Co. 233-499

Held that a, without capital stock organized under R. L. C. 125 S §§ 1, 2 may maintain an, of tort for libel against two publishing houses as joint tort feasons.

Finnish Temperance Soc. v. Socialistic Pub. Co. 238-345

III Assessments

Action by a receiver appointed by a U. S. Court of a foreign, to recover from a Massachusetts stockholder the balance alleged to be due on the stock standing in her name on the books of the Company. Held that the decree of the U. S. Court entering a "judgment and order for assessment against stockholders" ordering the receiver to collect by suit if necessary is binding on the defendant except as to "personal defences."

Butterworth v. Ross. 238-279

IV Contracts

Indorsement of notes of a, by a married woman. Liability of indorser. Conflict of laws.

Walling v. Cushman. 238-62

V Creation

(No case found)

VI Dissolution

Assessment of income tax on a sum of money paid in, of a, to a stockholder a resident of Massachusetts said sum of money being in excess of the par value of her stock.

Moore v. Tax Commissioner 237-574

VII Foreign

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Liability of a, for the operation of an automobile upon a public highway in this state without being registered here.

Gondek v. Cudahy Packing Co. 233-105

Equity has jurisdiction over a bill by a creditor and a stockholder in an, against that, and certain other domestic corporations and individuals for relief against fraud. The court may appoint a receiver.

Raynes v. Sharp. 238-20

Action by a receiver appointed by a U. S. Court of a, to recover from a Massachusetts stockholder the balance alleged to be due on the stock standing in her name on the books of the company.

Butterworth v. Ross. 238-279

A conveyance of real estate by a, being regular in form and under the corporate seal is presumed to be regular.

O'Brien v. O'Brien. 238-403

A, cannot enter into a partnership where it is not shown by any statute of its domicil to have been given authority to enter into a partnership.

Hosher-Platt Co. v. Miller 238-518

A stock dividend of a, issued solely by reason of an inventoried appreciation in value of its capital assets is taxable as income under St. 1916 C. 269 § 2 (b) and St. 1918 C. 252.

Tilton v. Tax Commissioner 238-596

VIII Liability

A, is liable for slanderous words spoken by one of its employees in the course of his employment.

Mills v. W. T. Grant Co. . 233-140

IX Meetings

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X Officers

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An action for breach of contract cannot be maintained against a treasurer of a, on his promise to turn

over to the plaintiff certain checks as such promise is without consideration. Such treasurer who knowingly uses or allows to be used such checks instead of turning them over to the plaintiff is liable for conversion.

Crohon & Roden Co. L't'd v. Rudnick. 232-555

Liability of a director to a stock holder for false statements contained in corporation returns signed and sworn to by such director.

Beaman v. Gerrish. 235-79

Construction and validity of an agreement between three persons who constituted all the directors of a corporation relating to the termination by one of them of his active connection with the corporation.

Validity of certain notes given by the defendants to the plaintiff in performance of said agreement.

Moss v. Copelof. 235-162

Held that a contract in writing signed without a seal by the president of a corporation in his individual name was the contract of the corporation.

Director Gen'l of R. R. v. Peoples Express Inc. 235-199

On facts held that the contract was executed by the plaintiff corporation and was approved by its treasurer.

Eastern Advertising Co. v. E. L. Patch Co. 235-580

On facts held that the defendant bank was justified in assuming that the plaintiff's treasurer was authorized to draw checks against the account of the plaintiff.

Maderian Alliance etc. Assoc. v. Lowell Tr. Co. 237-89

Bill to enforce the liability of an, of a corporation for a debt of the corporation to the plaintiff by reason of the fact that such, signed a false certificate of condition. The plaintiff's cause of action was not destroyed by the discharge in bankruptcy of the corporation.

E. S. Parks Shellac Co. v. Harris 237-312

XI Stockholders

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Right of a stockbroker who is a stockholder of a domestic, under St. 1903 C. 437 § 30 to examine the stock and transfer books of the cor-

poration to make copies and transcripts therefrom and employ counsel and copyists for such purpose.

Shea v. Parker. 234-592

Held that an issue of preferred stock to one who was the chief, a director and general manager of the corporation was valid.

Beaman v. Gerrish. 235-79

Bill in equity by a minority stockholder against a corporation and seven of its eight directors. Bill properly brought. Plaintiff held to have been diligent in asserting her rights.

Almy v. Almy, Bigelow & Washburn Inc. 235-227

Evidence as to an oral promise made by the plaintiff's agent properly excluded as the written contract contained the stipulation "No verbal conditions made by agents will be recognized."

Eastern Advertising Co. v. E. L. Patch Co. 235-580

The ownership of all the stock and the absolute control of the affairs of a corporation do not make that corporation and that individual owner identical. Nor do such ownership and control make the property of the corporation subject to the payment of the stock holders' debts.

Star Brewing Co. v. Flynn. 237-213

XII Subscriptions

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XIII Transfer of shares

A purchaser of stock presenting to the corporation a, together with the certificate impliedly represents that the, is valid. Such presentation does not constitute a contract of indemnification on the part of the purchaser.

Boston Tow Boat Co. v. Medford Nat. Bk. 232-38

Where the owner signs on the back in blank a, "as collateral" and delivers it to his employer to enable him to obtain a loan of money from a bank. Rights of persons who thereafter receive the certificate of stock.

Crosby v. Simpson. 234-568

Where the number of shares of common stock with a par value was changed into a larger number of

shares of common stock without a par value. Held that although the number of shares of stock had been increased the capital stock remained the same and that there was no excise tax due on the ground that the transaction was an increase in the capital stock of the corporation.
Hood Rubber Co. v. Com. 238-369
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XIV Ultra Vires

In a bill by a street railway company to establish a resulting trust in land held that there was evidence warranting a finding that the land was owned lawfully by the company and was not held.

Boston & Northern St. Ry v. Goodell.....233-428

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As to the amount of the attaching officers charges for the attachment, custody and keeper's fees.

Helliwell Garages Inc. v. Feinberg
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Judgment ordered tax commissioner for his expenses and, upon the income asked for by an executor.

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COVENANT

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- VI Selsin**
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I In General

Abatement of rent where there is a continuing breach of a, to restore the premises to their former condition.

Vorenberg v. Wm. Filene's Sons Co......232-153

Lessee held liable under a, in his lease to pay taxes for additional income tax paid by his lessor on rent received by him under said lease. Kimball v. Cotting. . . . 234-172

II Implied

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III Incumbrances

(No case found)

IV Quiet Enjoyment

(No case found)

V Running with Land

(No case found)

VI Selsin

(No case found)

VII Warranty

(No case found)

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DAMAGES

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I In General

For the taking of land for a water supply. Burden of proof as to title to the land is on the petitioner.

Kronoff v. Worcester 234-254

Where defendant in an action upon an account annexed sought, in recoupment. The burden of proof is on the defendant.

Betts v. Rendle 236-441

II Assessment

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Of, for breach of contract where plaintiff agreed for one year "to devote his entire time energy and skill to the selling of the products of" the defendant.

Saunders v. Smith Granite Co. 232-1

Of, for property taken for the construction of a state highway as to special benefit accruing thereby to the petitioner. Judge's charge to the jury. Questions submitted to jury.

Hall v. Com. 235-1

Petition for, of, alleged to have resulted to the petitioner from access to his place of business being cut off temporarily during the laying of a trunk sewer.

F. F. Woodward Co. v. Fitchburg 236-364

III Contracts

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Measure of, for breach of contract of sale is the difference between the contract price and the fair market price at the time and place fixed by the contract for performance.

Edelstone v. Schimmel 233-45

For breach of several written contracts to furnish to the plaintiff films of moving pictures for exhibition in his theatre.

Orbach v. Paramount Pictures Corp. 233-281

For breach of an agreement to deliver a certain quantity of rice. Evidence as to the market value of the rice, admissible. Plaintiff held to be entitled to the difference between the contract price and the market price.

Antonacopoulos v. Arax Grocery Co. Inc. 234-125

In an action of, for failure by the defendant to deliver certain goods to the plaintiff held that on the issue of the defendant failed to show that its substantial rights were injuriously affected.

Wonalancet Co. v. Collins, Plass, Thayer Co. 234-427

For breach of an agreement in a deed by a grantee to assume and pay certain mortgages and to hold the grantor harmless thereon.

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VIII Form

1 GENERALLY

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2 PERSONALITY

(No case found)

3 REALTY

(No case found)

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Kerr v. Kerr 236-353

III Causes

A decree in favor of the wife in separate support proceedings held to be a bar to a libel for, by the husband against the wife for cruel and abusive treatment.

Austin v. Austin 233-528

There is no "desertion" as a cause for a, where the libelee was insane for almost the whole period of the "three" consecutive years next prior to the filing of the libel."

Hartwell v. Hartwell.... 234-250

Libel by a wife charging her husband with cruel and abusive treatment. Answer of the husband alleging condonation by the libellant, cruel and abusive treatment of the libelee by the libellant prior to the filing of the libel and justification and excuse arising from alleged misconduct of the libellant with a certain physician. Exceptions of the libelee to the refusal of the judge to rule that the evidence did not warrant a decree or finding that the libellant had been subjected to cruel and abusive treatment as alleged in the libel and specifications and that upon the undisputed evidence her own conduct had been such as to prevent her from obtaining a divorce and to the admission and exclusion of evidence. Good faith of the libelee in making a charge of adultery against the libellant. Held that the general finding of the trial judge that the libelee "inflicted upon the libellant cruel and abusive treatment within the meaning of R. L. C. 152 § 1" and the order for a decree "on the ground of cruel and abusive treatment as found by me." Having been warranted was conclusive. Held that the trial correctly declined to rule that the libellant's own conduct furnished any justification for the libelee's acts or barred a divorce.

Freeman v. Freeman..... 238-150

On ground of desertion. Held that certain letters as stated written by the libellant to the libelee did not prove that the separation was with the libellant's consent and that a finding that the libelee had deserted the libellant as charged was warranted.

Purdy v. Purdy 238-506

IV Condonation

Held that the trial judge was justified in finding that the libellee was guilty of cruel and abusive treatment to the. Of inflicting injuries upon the person of the libellant by violence which never have been condoned.

Freeman v. Freeman 238-150

V Decree

Where a divorce was granted during the great war to a libellant who was born in Germany the libellee cannot contend that the, of divorce was invalid because the libellant was naturalized during the continuance of the war.

Oehlert v. Oehlert 233-497

VI Domicil

Held that the parties had never lived together in this Commonwealth as husband wife within the meaning of R. L. C. 152 § 4 and that the court had no jurisdiction to entertain the libel.

Field v. Field 236-256

VII Foreign

R. L. C. 152 § 35 relating to the validity of a, does not violate any provision of the Constitution of the United States.

Langewald v. Langewald . 234-269

On facts a, obtained by a husband in violation of our statute held to be of no force or effect here. The wife's libel for divorce against her husband on the ground of adultery dismissed on the ground of her connivance at or acquiescence in her husband's subsequent marriage she having appeared as a party in the, proceedings brought by her husband and made a financial settlement with him.

Langewald v. Langewald . 234-269

VIII Procedure

Where there is no evidence as to the law of another state a wife cannot maintain an action in this state during the pendency of her libel for, in such other state against her husband upon a judgment in said divorce proceedings.

Golder v. Golder 235-261

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DOG

(No case found)

DOMICIL

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Where a wife is living apart from her husband for justifiable cause, they both being domiciled here, and the husband afterwards removes his, to another state the wife's, remains here.

Turner v. Turner 234-37

"A person cannot be said to lose a, or residence by leaving it with an uncertain, indefinite half formed purpose to take up his residence elsewhere" — Until his purpose to remain has become fixed, he could not be said to have abandoned his former residence.

Field v. Field 236-256

Is mainly a question of fact. A man cannot elect to make his home in one place for the general purposes of life and in another place for the purposes of taxation.

Feehan v. Tax Commissioner . 237-169

Indorsement of notes of a corporation by a married woman. Held that on the record the, of the indorser was immaterial.

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As to the acquirement of an interest in, land by adverse possession.

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Bill by wife to redeem real estate the foreclosure of which had begun to preserve her rights therein.

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- IV Equitable**
- V Extinguishment**
- VI Remedies**
- VII Repairs**
- VIII Secondary**
- IX Support**

- I In General**
(No case found)

II Acquirement

Finding warranted by the evidence that the purpose of the conveyance was not to follow but to abandon the layout of the plan and that grantee acquired no, in a portion of certain avenue named on said plan.

Stevens v. Young 233-304

A title by adverse possession or an, of support for a building where the location has not been abandoned cannot be gained by an adjoining landowner to the whole or a part of a railroad location whether it is acquired by the corporation by purchase or by the exercise of the right of eminent domain.

Hurlbut Rogers Mach. Co. v. B. M. R. R. 235-402

Rights of grantees of lots bounded on a way shown on a plan. Grant by implication of a right of way. Desirability of a way for purposes of prospect as necessary to the granted premises.

Prentiss v. Gloucester 236-36

Creation of an, of light and air by express grant over so much of the petitioner's land as lies within ten feet of the respondent H's rear boundary line.

Tidd v. Fifty Associates. . 238-421

No, in light and air can be created by prescription such an, can exist only by express grant covenant or absolute necessity.

Tidd v. Fifty Associates. . 238-421

III Enjoyment

Bill to enjoin the defendants from obstructing a right of way by a fence and rocks. It is proper to include in the final decree an order as to the width of the opening in the fence even if the bill does not seek to establish the width of the way.

Dunham v. Dodge. 235-367

Bill to enjoin the obstruction of a private way. On the facts as stated held that a decree with costs is to be entered awarding nominal damages and directing the restoration of the passageway to its former condition and permanently enjoining the defendant from obstructing or interfering with the plaintiff's lawful use of the way within the limits described in the bill.

Siegel v. Starzyk 238-291

IV Equitable

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Construction of an, restriction prohibiting the erection of a building on the land and requiring the land to be kept open as a park for the benefit of the grantees. Application of such restriction to the remaining or adjoining lands of the grantor.

Amherst v. Gates 233-583

Bill to compel an adjoining owner to remove a structure alleged to be in violation of a building restriction in the original deeds of both parties. Plaintiff's right to enforce the restriction was not affected by a release given to the defendant by the original grantor nor by the fact that she had failed to object to similar violations by some others in the neighborhood.

Goulding v. Phinney. 234-411

A deed containing a building restriction held not to have defined with exactitude the interval of time over which such restriction shall run and under the provisions of St. 1887 C. 418 such a restriction is limited to a period of thirty years. Bill for assessment of damages dismissed.

Flynn v. Caplan 234-516

As to the erection of a barn by the defendant an adjoining lot owner in violation of an, that nothing should

be carried on upon the premises in the nature of a nuisance to the abutting owners or neighborhood. Held that the plaintiff's were not prevented from maintaining the suit by their laches, their waiver or acquiescence.

O'Keefe v. Sheehan 235-390

The inability of the master to determine whether the defendant's use of the premises was a nuisance required that the bill be dismissed without prejudice and without costs.

O'Keefe v. Sheehan 235-390

Plaintiff held to have no right of relief in equity because of the violation of a city ordinance by the defendant.

O'Keefe v. Sheehan 235-390

V Extinguishment

Held that the use of a certain private way was limited to the occupants of certain buildings and that when the buildings were destroyed the right of way was extinguished.

Nash v. Eliot Street Garage Co.
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VII Repairs

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By lessee to accept damages in recoupment for the lessor's continuing breach of a covenant to restore the premises to their former conditions shown by its answer in the first action.

Vorenberg v. Wm. Filene's Sons Co. 232-153

Where the seller in a contract of conditional sale elects to bring an action of replevin for the chattel he cannot also recover on the contract of sale.

Russell v. Martin 232-379

Held that the defendant by choosing to take his benefactions under the will had made his, and had thereby lost his right to enforce his contract to the extent of preventing the operation of the will as to other beneficiaries.

Noyes v. Noyes 233-55

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District attorney not required to elect between two counts each count charging the murder of a different person.

Com. v. Szczepanek 235-411

Held that the plaintiff did not elect by recovery in the first of two actions brought by him on a contract of employment to consider the contract as terminated.

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236-105

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O'Brien v. Logan.....236-507

A lessee who has been unlawfully evicted may elect to sue the lessor for breach of the covenant of quiet enjoyment or to bring an action of tort for damages.

Mitsahos v. Morrill.....237-29

Bill by the plaintiff to enforce specific performance of a written contract of the defendants D. and Arg. to convey to him certain real estate "by a good and sufficient deed ...conveying a good and clear title to the same free of all incumbrances except a mortgage for..." which agreement was duly recorded. Several weeks later the defendants D. and Arg. conveyed the same real estate to the third defendant A. Some time after the first agreement was made the plaintiff learned that the defendant D. was a married man. Held that the plaintiff at his, had a right to a conveyance of all the interest of D. and Arg. in the property if he chose to take it with a proper abatement from the purchase price on account of his failure to obtain a release of the dower interests of the wife of D.

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Bill by a minority stockholder against a corporation and seven of its directors to enjoin the alleged improper discharge of a debt owed to the corporation by one of the defendant directors and the payment of alleged unreasonable and excessive salaries to the defendant directors in accordance with a vote of the directors against the protest of the plaintiff.

Almy v. Almy, Bigelow & Washburn Inc.235-227

Bill by the widow against the executor of her husband's will and others to impress with a trust in her favor certain shares of stock in a certain corporation issued to her husband and one of the defend-

ants and to have been issued in payment for a laundry business loaned by the widow and sold by her to the corporation.

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Cannot enforce an order of the board of health to abate a nuisance on the defendant's premises where it does not appear in the proceedings that a "source of filth or cause of sickness" existed on the premises of the defendant.

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Suits in, by a trustee in bankruptcy to compel conveyance to him of certain parcels of real estate alleged to have been conveyed by the bankrupt in fraud of his creditors.

Reed v. Chase238-83

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■ The statute of limitations is as applicable in, as at law.

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Bill for accounting by a customer against a firm of stockbrokers and for recovery of certain bonds and stocks held as collateral security.

Wilde v. Sawtelle.....232-117

Held that judge was not obliged to retain the bill in equity for an accounting between the parties where bill is brought by mortgagors to set aside a foreclosure of a mortgage.

Downing v. Brennan:....232-535

Bill for an accounting by a mortgagee and for a discharge of the mortgagees, dismissed.

Mitchell v. Wright234-458

Bill for accountings by the plaintiff an attorney against two defendants also attorneys and a third defendant for sums alleged to be due from each of them to the plaintiff by reason of payments made to them for professional services rendered by them and the plaintiff in certain matters. Held that the bill was founded upon entirely distinct and separate causes of action and that demurrers to the bill on the ground of multifariousness were rightly sustained.

Reno v. Cotter236-556

Where by an oral agreement between a savings bank the first mortgagee and the second and third mortgagee and the owner of the real estate the second and third mortgagee managed the property collected the rents and paid for the repairs and turned over the balance from time to time to the savings bank the same to be applied by it to the payment of taxes and interest and the amounts due on the mortgages. Bill for an accounting by the second and third mortgagee against the savings bank and the administrator of the owner of the real estate both as administrator and individually.

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Plaintiff cannot be compelled to contribute to the payment of taxes and water rates paid by the defendants after he has demanded of them a deed of his share in the real estate.

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In a bill in, to restrain an infringement of a certain trade name and label.

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Bill to redeem property from a second mortgage. Held that the plaintiff had elected to waive, and relied on redemption.

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VI Equitable Attachment

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Bill to reach and apply property of one corporation conveyed to another corporation in fraud of the creditors of the former.

Manufacturers Nat. Bk. v. Simon Manuf. Co. 233-85

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Bill by a judgment creditor of a corporation to reach and apply property of the defendant alleged to have been fraudulently conveyed by it to another corporation with the intent to prevent the plaintiff from obtaining satisfaction of his judgment.

Schurman v. Improved Plastic-Slate Roofing Co. 233-499

A bill to reach and apply in payment of a debt owed to the plaintiff by the principal defendant, shares of stock in a defendant corporation alleged to be owned by the principal defendant and certain merchandise of the principal defendant placed in a warehouse in the name of a second defendant cannot be maintained, when.

Stone Leather Co. v. Henry Boston & Son's Ltd. 234-477

Bill by a judgment creditor to reach and apply in satisfaction the judgment debt an annuity given to the debtor under his father's will.

Morel v. Cornell 234-563

Bill to reach and apply property of the defendant which had been placed in the hands of another in fraud of the creditors of the defendant. It is not necessary that the plaintiff should have been a creditor at the time of the fraudulent transfer.

Martel v. Dorey 235-35

A bill cannot be maintained to reach and apply in payment of a debt due the plaintiff from the defendant certain salary due the defendant as a municipal officer.

Hooker v. McLennan 236-117

Bill to reach and apply in payments of amounts found due the plaintiff certain alleged rights of two of the defendants arising out of litigation carried on by them for the benefit of the third defendant.

Reno v. Cotter 236-556

Bill to reach and apply in satisfaction of a certain debt certain shares of stock of the defendant corporation standing in the name of the defendant F. also certain indefinite and unenumerated merchandise which it was alleged the defendant F. transferred to the defendant corporation when that corporation was organized.

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Plaintiff not entitled to ask for relief from his own, in a suit in equity to set aside a conveyance of real estate.

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Defendant corporation not entitled to ask for relief from the consequences of its fraudulent conduct in a suit to reach and apply property fraudulently conveyed.

Manufacturers Nat. Bk. v. Simon Manuf. Co. 233-85

Mass. Tr. Co. v. Simon Manuf. Co. 237-92

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Defendants cannot take advantage of the, of the plaintiff when the attempt and purpose of the plaintiff was known to them.

Magee v. Magee 233-341

Bill to set aside a sale of real estate made under the power of sale

contained in a mortgage on the ground of, or collusion between the mortgagee and the life tenant of the real estate and his wife, dismissed.
Porter v. Porter.....236-422

Equity has jurisdiction over a bill by a creditor of and a stockholder in a foreign corporation against that corporation and certain domestic corporations and individuals for relief against, by which the plaintiff's interests as a stockholder and creditor of the foreign corporation were rendered valueless. The court may appoint a receiver. The form of relief if the plaintiff succeeds in establishing liability is for the court than to determine.

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Chase v. Proprietors of Revere House232-88

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Warr v. Collector of Taxes of Taunton234-279

On facts held that the plaintiff the lessee could not maintain a suit in equity to enjoin the defendant the lessor from compelling plaintiff

to vacate the premises for non-payment of rent under the lease.

Darvirris v. Boston Safe Deposit & Tr. Co.235-76

Bill by the lessee to enjoin the defendants the lessors from tearing down the leased premises dismissed.

Peoples Express Inc. v. Quinn235-156

Bill to enjoin the defendants from conducting a local express business on a railroad because of violation of reasonable rules and regulations of the plaintiff and of the contract between the plaintiff and the defendant corporation.

Director Gen'l of R. R. v. Peoples Express Inc.....235-199

On facts plaintiff denied an, to prevent the defendant from using certain names used by the plaintiff in his business as a private detective.

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On facts held that the plaintiff the lessee could not maintain a suit in equity to enjoin the defendant the lessor from evicting him for breach of a covenant of the lease.

Finkovitch v. Cline.....236-196

Bill to enjoin the unlawful use of a trade name. Defendant enjoined.

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Bill to enjoin the defendant city from draining water from a public highway across the land of one H. and of the plaintiff dismissed.

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Bill to enjoin the foreclosure of a mortgage for breach of a "condition" therein dismissed although the record discloses a case of hardship to the plaintiff.

American House Hotel Co. v. Hemenway.....237-180

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Densten Hair Co. v. United Leather Workers.....237-199

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Bill by ten taxable inhabitants to
enjoin the extending of M. street as
a public way in order to facilitate
the leasing of land heretofore taken
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Wright v. Mayor et al of Cam-
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The right of a trustee under a
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A bill in equity is maintainable to
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ground of a mutual, honestly made
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the number of the lot of land to be
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a declaration of trust is not a mis-
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partnership.

Steele v. Estabrook . . . 232-432

Held that the plaintiff could not
bring a bill against the defendants
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tain agreement between the parties
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Bill to enforce an agreement to
their joint advantage between the
plaintiff and the defendant relating

to the purchase by either of them of certain real estate belonging to a building trust the plaintiff being a large shareholder in the building trust and instrumental without disclosing his relations with the defendant in bringing about a sale of the property by the trust to the defendant dismissed. The plaintiff and his fellow shareholders sustained to each other a fiduciary relation, a deliberate violation of which to their loss and his individual gain will not be sanctioned.

Howe v. Chmielinski. 237-532

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Superior Court has jurisdiction of a suit in, to remove a cloud from the title to land.

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XVIII Redelivery of Property

Bill to compel a reconveyance of real estate dismissed because the plaintiff had conveyed the premises in order to hinder defeat or defraud the creditors, of one of the plaintiffs.

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XIX Remedy at Law

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Held that the defendant by his conduct had waived the objection that the plaintiff had a plain, adequate and complete.

White Sewing Machine Co. v. Morrison. 232-387

Bill in equity to restrain a tax collector from proceeding to collect a tax dismissed as the plaintiff had an adequate.

Warr v. Collector of Taxes, Taunton 234-279

Jurisdiction in equity in cases when the parties have not a plain adequate and complete.

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Bill in equity for relief against fraud by one of the defendants concerning shares of capital stock in a corporation. An action at law affords no adequate relief for such fraudulent conduct.

O'Brien v. O'Brien 238-403

XX Specific Performance

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EQUITY PLEADING AND PRACTICE

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I Abatement

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II Amendment

See Bill V

An, to a bill cannot be allowed by the Superior court after a final decree has been entered.

Martel v. Dorey 235-35

The powers of the full court in a suit in equity which comes before it on appeal include that to order or authorize amendments to pleadings.

Martel v. Dorey 235-35

Held that an, after findings were made by which the plaintiff in a suit in equity was permitted to amend his bill by striking out the name "Dionne Trucking Co., Inc." wherever it appeared and substituting therefor "Dionne Trucking Inc." properly allowed.

Connelly v. Dionne Trucking Co. 236-460

After rescript and before final decree of a bill to set aside a contract between the plaintiff and the defendant whereby the defendant secured an option on the plaintiff's interest in certain mining properties.

Ross v. Burrage 237-545

III Answer

Where no demurrer is filed the objection that the bill does not state a case for equitable relief can be taken advantage of only by raising it specially in the.

First A. M. E. Society of Boston v. Worthy 232-331

Averment in, in conflict with those of the bill are true.

Public Service Commor's v. N.E. Tel. & Tel. Co. 232-465

Motion by the defendant after rescript and before the entry of a final decree for leave to file a supplemental, and that the case might be reopened, denied.

Noyes v. Noyes 234-397

IV Appeal

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Findings of fact by a master where the evidence is not reported held to be final on.

Fay v. Corbett 233-403

Although the ten days have expired for entering the, the Superior

Court can extend the time for entering the.

Loonie v. Wilson 233-420

A paper entitled "Exception" filed after the entry of a final decree which was never presented to the trial judge raises no question of law in this court upon an, from the final decree.

Clark v. Waban Rose Conservatories 234-34

Upon, where no evidence was reported held there was no apparent abuse of discretion in calling the case for trial and no error of law.

Clark v. Waban Rose Conservatories 234-34

Hearing on, from decree denying motion for recommitment of report of bridge commissioners and objection to its confirmation.

Mayor & Aldermen of Springfield Pe'trs 234-578

On an, from a decree of a single justice who heard the case upon the master's report alone the full court stands with reference to the facts found and the power and duty to draw inferences as did the single justice unaffected by the conclusion reached by him.

Glover v. Waltham Laundry Co. 235-330

On, a finding made by the trial court after a hearing in which witnesses have been called in person to testify before him will not be reversed unless plainly wrong.

W. B. Manuf. Co. v. Rubenstein 236-215

On, by the plaintiff where no evidence was reported a decision of a judge of the Superior Court denying the plaintiff's motions to amend his complaint and to discharge the reports and making a finding that no action had been taken looking to the entry of the report in the full court and allowing the defendant's motions that the report be discharged and that judgment be entered for the defendants upon the order sustaining the demurrers must stand.

Reno v. Cotter 236-556

Held, that under the circumstances as stated the court had no authority to permit the filing of the cross bill while the, from the final decree was pending.

Goldstein v. Burrows 237-79

On, findings voluntarily filed by the judge stand on the same footing as a report of facts made under R.L. C. 159 § 23. If specific findings are desired they should be specially requested.

Matthews v. Dinner 237-153

Bill by wife against a bank and an individual defendant to redeem real estate the foreclosure of which has begun to preserve her rights therein. By the individual defendant alone.

Ryder v. Brockton Sav. Bk. 238-52

Upon an, from a decree dismissing a bill in equity the decree must stand unless it clearly appears from the printed record that the decision of the trial judge was erroneous.

N. Y. N. H. & H. R. R. v. Plimpton 238-337

Where the only pleadings filed by the defendants were demurrers and no interlocutory decree was entered an, from a final decree dismissing the bill put in issue the merits of the demurrers.

O'Brien v. O'Brien 238-403

A finding of a judge on, will be sustained unless upon an examination of the evidence they are found to be plainly wrong.

Sigel v. Sigel 238-587

V Bill

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Allegations of, are true only so far as admitted or not at variance with facts well pleaded in the answer.

Public Service Commr's v. N. E. Tel. & Tel. Co. 232-465

Where relief is sought by an amended answer a cross, is unnecessary.

Magee v. Magee 233-341

Denial of a motion for leave to file a cross. Equity Rule 14 of the Superior Court.

Fuller v. Fuller 234-187

In a, to enjoin the defendant from foreclosing a mortgage it was held that the fraud of the defendant was open to the plaintiff under the prayers of the, without the institution of a separate suit or an amendment in the nature of a supplementary.

Bearse v. Lebowich 234-492

Where a case is reserved for the full court upon a, and demurrer no intendments are made in favor of the plaintiff; the plaintiff should plead every material fact essential to a right to relief.

Lexington v. Surburban Land Co. 235-108

To restrain the purchase by the trustees of a corporation of certificates of membership beyond those then held by them and from voting at corporation meetings upon those which they already held, held not to be multifarious. Allegation in, held not to be an allegation that that a certain vote of the directors of the corporation was illegal.

Tapper v. Boston Chamber of Commerce 235-209

By a minority stockholder against a corporation and seven of its eight directors. Held to have been properly brought and not to contain matters which were immaterial and irrelevant because of certain allegations contained therein. Held not to have been multifarious.

Almy v. Almy, Bigelow & Washburn Inc. 235-227

For accountings by the plaintiff an attorney against two defendants also attorneys and a third defendant for sums alleged to be due from each of them to the plaintiff by reason of payments made to them for professional services rendered by them and the plaintiff in certain matters. Held that the, was founded on entirely distinct and separate causes of action and that demurrers to the, on the ground of multifariousness were rightly sustained.

Reno v. Cotter 236-556

Whether the plaintiff should be allowed to amend or to divide his, rests in sound judicial discretion.

Reno v. Cotter 236-556

The proper office of a supplementary, is to support a cause of action existing when the original, was filed by facts occurring since the filing of the, or coming to the knowledge of the plaintiff subsequent thereto.

Reno v. Cotter 236-556

Held that under the circumstances as stated the court had no authority to permit the filing of the cross, while the appeal from the final decree was pending.

Goldstein v. Burrows 237-79

By a creditor of and a stockholder in a foreign corporation against that corporation and certain other corporations and individuals for relief against fraud held not to be multifarious.

Raynes v. Sharp238-20

The court is not limited by specific prayers appearing in any form in the, but can under the general prayer decree adequate relief.

Raynes v. Sharp238-20

To enjoin the enforcement of a judgment recovered against a man and his wife in an action at law alleging no proper service on the defendant in the action at law and that the defendant appeared specially and pleaded his "discharge in bankruptcy."

Held that a general demurrer to the bill was rightly sustained.

Karrick v. Trask238-476

VI Costs

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The, in a suit in, to which a bankrupt would be a real party should be awarded to his trustee in bankruptcy.

Loonie v. Wilson233-420

A suit in, by the heirs to have the residuary clause of a will declared null and void in which a town was admitted as a party defendant is a strictly adversary proceeding and only one set of, may be allowed against the plaintiffs.

Peirce v. Att'y Gen'l.234-389

VII Decree

Form of, in a suit in equity by a mortgagee to reform a mortgage deed.

Hillside Co-operative Bank v. Cavanaugh232-157

Form of, in a suit in equity to to enforce the payment of a partial assignment of funds.

Andrews Elec. Inc. v. St. Alphonse Cath. etc., Soc.233-20

Jurisdiction of the Superior Court to enforce its, by contempt proceedings when that, is based upon a, of the court of another state.

White v. White233-39

Final, taken as a disposition adversely to the plaintiff of the ques-

tion as to the authority of counsel for one of the defendants.

Clark v. Waban Rose Conservatories234-34

While exceptions are pending and a final, is entered from which an appeal is taken the, has no greater force than an order for a.

Wright v. Fisher234-70

A motion to open an order for a final, contained in a rescript properly may be denied, when.

Noyes v. Noyes234-397

A statement in a report that an order was made sustaining a demurrer is a sufficient foundation for the subsequent entry of an interlocutory, nunc pro tunc embodying its substance. Held that an interlocutory, sustaining the defendants' demurrers so far as it involves a ruling of law was right as the court had jurisdiction and so far as it involved a finding of fact it must stand since no evidence was reported.

Reno v. Cotter236-556

A signed statement or decision filed instead of a formal, is equivalent to an interlocutory.

Reno v. Cotter236-556

The final, includes numerous matters which had been the subject of interlocutory orders and decrees. These matters included in the final, are open for consideration. Interlocutory decrees not appealed from are open to revision only to the extent that the final, is affected thereby.

Reno v. Cotter236-556

"The entry of the, implies a finding of every fact essential to the right entry of that, permitted by the evidence" and the pleading.

Star Brewing Co. v. Flynn237-213

The court is not limited by specific prayers appearing in any form in the bill but can under the general prayer, adequate relief.

Raynes v. Sharp238-20

Bill by wife against a bank and an individual defendant to redeem real estate the foreclosure of which has begun to preserve her rights therein. Appeal alone by the individual defendant. Held that the, entered

should be affirmed as it did not injure any rights of the individual defendant.

Ryder v. Brockton Sav. Bk.
238-52

The entry of a final, dismissing a bill with costs when the only pleading filed by the defendant is a demurrer imports a sustaining of the demurrer in the absence of anything either on or outside the record to indicate any other ground. The better and more satisfactory practice would have been to have entered an interlocutory, sustaining the demurrer. A mere order sustaining or overruling the demurrer. A mere order sustaining or overruling the demurrer has been treated as the equivalent of an interlocutory.
O'Brien v. O'Brien 238-403

VIII Demurrer

See II Bill, VII Decree

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Bill in equity to restrain a tax collector from proceeding to collect a tax dismissed on, the plaintiff having an adequate remedy at law.

Warr v. Collector of Taxes of Taunton 234-279

For reasons as stated a, to a bill in equity by a minority stockholder against a corporation and seven of its eight directors was overruled.

Almy v. Almy, Bigelow & Washburn Inc. 235-227

A, on the ground of multifariousness is not equivalent to a, on the ground that no case entitling the plaintiff to equitable relief is stated.

Raynes v. Sharp 238-20

Where a final decree was entered dismissing a bill against three defendants each of whom had filed a separate, and no other pleading and no action having been taken on the demurrers except the said final decree other than upon the, of one of the defendants upon which was entered an order dismissing the bill unless leave to amend the bill was given. No interlocutory decree was entered. Held that the merits of the, were open on appeal from a final decree dismissing the bill.

O'Brien v. O'Brien 238-403

By, advantage can be taken of laches shown on the face of the bill.

O'Brien v. O'Brien 238-403

IX Exceptions

See XI

X Hearing

On bill and answer. Truth of allegations in bill and answer.

Public Service Comm'rs v. N. E. Tel. & Tel. Co. 232-465

XI Interpleader

Exceptions of the claimant named in an, overruled because the ownership of the ice at the time of resale was immaterial.

Underwood v. Coolidge Ice Co.
232-124

XII Jury Issue

Held that the plaintiff had no constitutional right to have issues framed for a jury, and a denial of a motion for the framing of issue was not an abuse of discretion.

McCarthy v. Waltham Co-operative Bk. 234-512

XIII Master

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In a suit in equity between a customer and a firm of stock brokers certain evidence admitted and findings made by a, treated as irrelevant and disregarded by the court.

Wilde v. Sawtelle 232-117

Effect of finding of, as to the validity of the election of certain officers of a beneficiary association.

Society of Mutual Succor etc., v. Iacobe. 232-263

Defendant's motion that the, be instructed to make additional findings and report the evidence rightly denied.

Magee v. Magee 233-341

Discretionary with the court to order the evidence or any part of it reported by the.

Fay v. Corbett 233-403

Where both an interlocutory and a final decree have been entered the the exceptions to the master's report cannot be considered under R. L. C. 159 § 26 as it does not appear that the final decree is erroneously affected by the interlocutory decree overruling the exceptions and confirming the report.

Fay v. Corbett 233-403

The, may disregard the opinion of an expert as to the correct construction of a statute of another state. Held that the master's construction of the statute was correct.

Martin v. Otis 233-491

Unless the evidence is reported findings of, are final unless shown by the report to be erroneous.

Fuller v. Fuller 234-187

Glover v. Waltham Laundry Co. 235-430

Poulette v. Chainay 236-602

Exception to, 's report overruled as the question raised by the exception was not raised at the trial.

Capen v. Capen 234-355

Where no exceptions were filed to a supplemental report of a, it is open to the plaintiff to contend that findings of fact in the supplemental report of the, were not warranted by the evidence.

Capen v. Capen 234-355

The full court has the power to make such supplementary inferences of fact as may be justified by the by the findings of the.

Bearse v. Lebowich 234-492

Bill to enjoin the unlawful use of a trade name. Unfair competition on the part of the defendant. Profits made by the defendant. Evidence as to costs and profits. Discretionary with the, as to whether a witness was qualified to testify as an expert and whether he should reopen the case for further hearing.

W. B. Manuf. Co. v. Rubenstein 236-215

Sale of a "forty acre farm" by a firm of real estate agents. Rulings of the, as to the sufficiency of the description of, the property in the memorandum of sale and the agent's authority to make such a memorandum of sale as made held to be wrong.

Danforth v. Chandler 237-218

On the facts as stated held that the court's denial of a motion to recommit a master's report shows no abuse of discretion.

Linton v. Noonan 238-31

It is not the province of a, to make rulings of law.

Linton v. Noonan 238-31

A report by a, of the evidence by question and answer is a compliance

with an order of the Superior Court to report the evidence.

Reed v. Chase 238-83

Held that where the first, did not fully comply with the terms of the order of reference the suit may properly referred to a second, although there was a stipulation by the parties under which they had agreed to accept the findings of the first. Held that on the record the report of the first, ought not to be discharged. Held that the first master's oral announcement of his proposed findings did not constitute any part of his report.

Gulesian v. St. James Amusement Co. 238-172

XVI Parties

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Bill to enforce the liability of an officer of a corporation for a debt of the corporation. Held that the corporation was properly made a defendant, notwithstanding its discharge in bankruptcy.

E. S. Parks Shellac Co. v. Harris 237-312

Equity will not assume jurisdiction of an action of contract against a voluntary association because its members "are too numerous for all to be named parties to the present suit."

Maguire v. Reough 238-98

XV Plea

(No case found)

XVI Rehearing

Motion by the defendant after rescript and before the entry of a final decree for leave to file a supplemental answer and that the case might be reopened, denied.

Noyes v. Noyes 234-397

XVII Replication

(No case found)

XVIII Review

Held that a decree of the Superior Court purporting to be made under the workmen's compensation act was void for want of jurisdiction and must be vacated on, for error on the face of the record.

Sterling's case 233-485

XIX Revivor

(No case found)

See Report Superior Court

ERROR

The proceedings upon a writ of, are according to the common law except as modified by usage. There can be no review of questions of fact.
 Hanzas v. Flavio 234-320

A writ of, to the United States Supreme Court does not vacate a final judgment of the Superior Court.
 Duart v. Simmons 236-225
 See Indictment, Judgment III Review.

ESCAPE

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ESCHEAT

See Descent

ESCROW

See Deed

ESTATE TAX

(No case found)

ESTOPPEL

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I In General**II Deed****III In Pals****IV Record****I In General**

(No case found)

II Deed

The heirs of a married woman who made a, in 1865 in which her husband did not join as grantor or otherwise are not estopped from asserting eighteen years after the

death of the husband who survived her eleven years that the, was void.
 Nickerson v. Nickerson . . 235-348

The heirs of a married woman the owner of the land were not estopped by a, of the land given by her husband in 1863 in which she joined for release of dower from claiming under the independent title derived from her.

Nickerson v. Nickerson . . 235-348

III In Pals

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In an action of contract, held that by its silence as to its claims against a third party the defendant was not estopped from setting up its claim in set-off.

E. V. Harman & Co. v. Wm. Filene's Sons Co. 232-52

Where one enters and continues to hold the locus as a tenant and never renounces his landlord's title he is estopped to deny it in proceedings between them.

Curtis v. Goodwin 232-538

On facts respondents not estopped to deny the petitioners right to a renewal of a lease.

Lamson v. Coulson 234-288

Two of four partners named as defendants not estopped by the filing of a partnership certificate from asserting that they withdrew from the partnership before service of writ in said action.

Hanzas v. Flavio 234-320

Indorsement of notes of a corporation by a married woman held that the defendant was estopped from setting up the claim that the indorsement was made in Michigan.

Walling v. Cushman 238-62

A remarriage with knowledge of the facts estops the party, entering into it from denying the validity of the previous divorce.

Parmelee v. Hutchings . . 238-561

IV Record

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Trial of an indictment charging the keeping of a disorderly house. Evidence of admissions by the defendant from his silence when he was informed of what happened between the men in his house was properly admitted.
Com. v. Porter.....237-1

Held that the evidence clearly warranted that the defendant had admitted defalcations and that the pay-roll books admitted in evidence showed "how much the defendant had taken."

Annawan Mills Inc. v. Mangene
237-451

2 AGENTS

The acts and declarations of an agent are incompetent to prove his authority or its extent.

Blaisdell v. Hersum & Co. Inc.
233-91

3 DYING

(No case found)

4 FORMER OWNERS AND OCCUPANTS

In an action for rent of a store a letter written by a former lessor after the sale of the property not competent because when the letter was written the lessor was not the owner of the premises.

Reidy v. Kennedy.....233-514

5 JOINT PARTIES

(No case found)

6 PARTIES

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Held that voluntary statements to police officers by the defendant in a murder trial properly admitted and that there was nothing to indicate that the defendant was not accorded a full and fair hearing upon this phase of the case.

Com. v. Russ.....232-58

Voluntary statements of the defendant held admissible to show ill will as a motive for his crime.

Com. v. Russ.....232-58

In an action by an administrator to recover for the conscious suffering and death of his intestate the statement of the intestate "It is my fault I am to blame" is admissible under a count for conscious suffering as an admission against interest but it is not admissible on the same under a count for causing death.

Eldridge v. Barton 232-183

Certain evidence admissible as tending to show consciousness of guilt on part of the defendant.

Com. v. Sherman 234-7

Certain evidence as stated tending to show that one of the, was killed in battle held to be competent.

Hanzas v. Flavio 234-320

A wife may be permitted to testify respecting conversations with her husband before her marriage if she is willing to do so.

Com. v. Barronian 235-364

Evidence of self-serving statements offered by the plaintiff in rebuttal held to be incompetent.

Bilodeau v. Fitchburg & Leominster St. Ry. 236-526

Admissibility in evidence of a telephone conversation between the Jamaica Pond Garage Inc. v. Woodside Motor Livery Inc.

236-541

A letter from the plaintiff to the defendant held to have been improperly admitted. It was self-serving because it stated incompetent elements of claimed damage based on inadmissible evidence.

Curtis v. Boston Ice Co. . . 237-343

The sweeping after the accident of the glass and ice from the sidewalk did not prove or tend to prove any wrongful act or omission by the defendant or amount to an admission of liability.

Tiffany v. F. Vorenberg Co. 238-183

Declarations and admissions of a legatee or devisee under a will who is charged with procuring the making of the will by undue influence are admissible, when.

Becker v. Becker 238-362

7 RES GESTAE

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Held declaration of a deceased person properly excluded. Prelim-

inary hearing by the court on the question as to whether the declaration offered "was made in good faith before the commencement of the action and upon the personal knowledge of the declarant."

Bodfish v. Cross 235-428

Crowley v. O'Donnell 238-475

Testimony as to what was said by the wife of the plaintiff to the defendant immediately preceding the assault is admissible as part of the, and also in mitigation of damages.

Benjamin v. McLellan ... 237-141

Held that a declaration of a deceased person was improperly admitted in evidence because the judge did not make the preliminary finding required by the statute.

Horan v. Boston Elev. Ry 237-245

Admission of the declarations of a deceased person. That the preliminary finding required by the statute was made is inferred from the reception of the evidence unless the exceptions taken show that no such finding was or could have been made.

Murphy v. Hanright. 238-200

8 PRIVIES

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(No case found)

9 THIRD PERSONS

In an action for conversion held that the declarations of a third person were not admissible.

Koski v. Haskins 236-346

II Burden of Proof

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In proceedings to abate a nuisance under the provisions of St. 1914 C. 624 the rule as to the, is the same as in civil suits.

Chase v. Proprietors of Revere House 232-88

Where defendant sets up a discharge in bankruptcy as a defense the, is on him to show that the plaintiff had notice or actual knowledge of the bankruptcy proceedings.

Smith v. Hill 232-188

In an action to recover against the estate of his brother-in-law for the support of the plaintiff's mother-in-law the, is on the plaintiff to

establish a contract express or implied on the part of the testator to pay for such support.

Lyons v. Jackson.....232-275

Of want of due care and assumption of risk of plaintiffs is on the defendants in an action for personal injuries.

Cambra v. Santos.....233-131

It cannot usually be ruled as matter of law that a, has been sustained.

Morrissey v. Conn. Valley St. Ry.
233-554

Where a note was fraudulently negotiated to the plaintiff the, is on the plaintiff to show that he had had no actual notice or knowledge of of the fraud.

Merchants Nat. Bk. v. Marden
Orth etc. Co.....234-161

In an action for damages for the taking of land for a water supply the, is on the petitioner to prove a clear title to the property by a preponderance of the evidence held that the petitioner had not thus sustained the.

Kronoff v. Worcester234-254

In an action to recover for goods sold and delivered the, is upon the plaintiff to prove by a fair preponderance of the evidence that goods were sold to the defendant.

Jackson Caldwell Co. v. Poto
235-58

Of partial failure of consideration in an action on a promissory note is upon the defendant if set up in his answer.

Indiana Flooring Co. v. Rudnick
236-90

The, is on the defendant where he seeks damages in recoupment.

Betts v. Rendle.....236-441

In an action to recover for goods sold and delivered the, is on the plaintiff to show that the defendant had waived his rights arising from the shipment by the carrier not sanctioned by him.

St. John Bros. Co. v. Falkson
237-399

In an action against a carrier for failure to deliver certain merchandise held that the, rested upon the plaintiff to show the non-delivery of the freight.

Nollman v. N. Y., N. H. & H.
R. R.....238-465

III Certainty

(No case found)

IV Character and Reputation

1 CHARACTER

(No case found)

2 REPUTATION

Trial of an indictment charging the keeping of a disorderly house. Evidence as to the defendant's, properly excluded as the witness did not have sufficient knowledge of the defendant's general.

Com. v. Porter.....237-1

V Confessions

1 GENERALLY

The, of each of two joint defendants are admissible as affecting only the party making them.

Com. v. Teregno234-56

2 OFFICER

To, admitted it being voluntary and not made under the influence of some threat or promise.

Com. v. Sherman.....234-7

3 VOLUNTARINESS

Of defendant to police officer in an arson case held to be voluntary and admissible.

Com. v. Sherman.....234-7

Upon the whole evidence no facts were disclosed which justified a contention of the defendant that his confession was not made "freely, voluntarily and without compulsion or inducement of any sort."

Com. v. Szczepanek.....235-411

A confession made to a person in authority, even though it be induced by the solicitation and inquiry of such person is prima facie voluntary and the person objecting to its admission in evidence must show that it was made under such pressure of hope or fear as to raise a doubt of its accuracy.

Com. v. Szczepanek.....235-411

VI Documentary

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1 ANCIENT WRITINGS

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2 BOOK ACCOUNTS

In an action by a wife to test the validity of a note and mortgage of personal property, given by her deceased husband to his mother the books of account check books and the slips kept by the deceased in accordance with a "McCaskey System" properly admitted.

Doane v. Doane.....238-106

Held that an order blank so called offered by the defendant as a part of its "system of keeping books" was properly rejected as evidence it being in no sense a book of account.

Dorr v. Mass. Title Ins. Co.
238-490

3 ENTRIES AND MEMORANDA

Entries upon the books and returns made the railroad commissioners admissible in bill to establish a resulting trust in land.

Boston & Northern St. Ry. v. Goodell233-428

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Heard v. Calkins.....234-526

4 RECORDS

Town, and, of a building committee of a town held admissible as public.

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Court, are conclusive and binding on the parties.

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Admissibility in evidence of a hospital record in an action for personal injuries.

Leonard v. Boston Elev. Ry.
234-480

Bilodeau v. Fitchburg & Leominster St. Ry.236-526

Nothing in a hospital record shall be admissible as evidence which has reference to the question of liability in an action for personal injuries.

Inangelo v. Petterson....236-439

Evidence of the assessments, tax lists and advertisements of sale where title is claimed under tax deeds given more than twenty years before are admissible on the question of the validity of the tax titles.

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Admission in evidence of the final account of the defendant as guardian of the minor son of the deceased in an action against him by the administrator with the will annexed for money had and received.

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Fay v. Corbett.....233-403

To prove that a stipulation made by the attorney for the parties did not constitute the entire contract between the parties.

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To show an understanding between the parties as to when their written agreement should take effect as a contract.

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Where there are several agreements upon separate instruments between the same parties and relating to the same subject matter and delivered the same day, one of such instruments is admissible in.

Davis v. Tremont Tr. Co. 234-502

Parol evidence is admissible to prove the existence of a voluntary association and the authority of the defendants to act for it.

Adams v. Swig.....234-584

Evidence of a conversation between the defendants and their agent tending to explain the conduct of the defendants on which the plaintiffs base their claim of the construction of the ambiguous term in the lease.

N. Y. Central R. R. v. Stoneman
236-81

Where the beneficial interest in a trust created by a will is claimed by two corporations neither of whose names exactly corresponds to that given in the will evidence is admissible to aid in its construction.

Kingman v. New Bedford Home For Aged 237-323

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Lamb v. Jordan. 233-335

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Cass v. Lord. 236-430

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Martin v. Otis 233-491

Where the contract was made in another state and there was no evidence as to the law of that state the presumption is that it is the same as our own.

Park & Pollard Co. v. Agricultural Ins. Co. 238-187

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Taken by the full court of the general orders promulgated by the the Director General of Railroads of the United States even if they have not been called to our attention by counsel.

West v. N. Y. N. H. & H. R. R. 233-162

The Industrial Accident Board may take, of the rules regulations and orders of the State board of labor and industries for the prevention of accidents.

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The court cannot in this case take, that extract of Jamaica ginger is in fact an intoxicating beverage and that it is generally sold and used as such.

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XII Opinion

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1 GENERALLY

Question of, properly excluded because the facts ought to be warranted in evidence and the jury left to form their own opinion.

Com. v. Russ. 232-58

2 EXPERTS

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Expert testimony is admissible in a murder trial to show whether the death of the victim was due to strangulation or hemorrhage.

Com. v. Russ. 232-58

Testimony properly admitted to that when an automobile was going at a certain rate per hour it ought to have stopped when the brakes were set within a given distance.

Foley v. Lord 232-368

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Old Colony Tr. Co. v. DiCola
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A master may disregard the opinion of an, as to the correct construction of a statute of another state.

Martin v. Otis 233-491

It is discretionary with the trial judge to exclude a hypothetical question asked of an, if in the question facts are assumed which are not yet in evidence.

Earle v. N. Y. Cent. & Hudson
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Evidence of, as to the reasonable minimum compensation for the executive officers of the corporation during the period which he examined its books rightly excluded.

Beaman v. Gerrish 235-79

Whether the arrangement for a highly charged transformer wire was safe for persons in its vicinity did not call for expert opinion.

Robbins v. Athol Gas & Electric
Co. 236-387

Held that a "claims" agent of a gas company instructed "many years ago" to investigate and ascertain the cause of leaks in gas pipes for the purpose of making repairs and had made such investigations for many years was qualified as an, to testify as to the cause of the leak in question.

Nugent v. Boston Consolidated
Gas Co. 238-221

Testimony on the soundness of mind of the testator. Admission in evidence of a "preliminary question" as to the mental state of the testator.

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3 HANDWRITING

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4 LEGAL CONCLUSIONS

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5 NON-EXPERTS

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6 SOLVENCY

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XIV Presumptions

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Presumed that a child of three years and nine months did not possess sufficient discretion to exercise due care.

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Where a contract is susceptible of two meanings one lawful and the other not the presumption is in absence of something to show the contrary that the parties intended to act in accordance with the law.

Eastman Marble Co. v. Vermont
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There is a, in favor of the regularity of the proceedings of any court of general jurisdiction.

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McDonough v. Everett .. 237-378

Where the contract was made in another state and there was no evidence as to the law of that state the, is that it is the same as our own.

Park & Pollard Co. v. Agricultural
Ins. Co. 238-187

A conveyance of real estate by a foreign corporation being regular in form and under the corporate seal is presumed to be regular.

O'Brien v. O'Brien 238-403

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XVI Relevance and Remoteness
Vol. I, P. 197**1 WHAT IS RELEVANT**

Admission in, of certain pieces of paper to show that defendant had not signed them.

Com. v. Russ. 232-58

Certain evidence which have prejudiced the defendant should have been admitted in an action for a collision between two motor vehicles.

Foley v. Lord. 232-368

Evidence of the payment of taxes by the plaintiff and its predecessors admissible in bill to establish a resulting trust in real estate.

Boston & Northern St. Ry. v. Goodell 233-428

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Reidy v. Kennedy. 233-514

In an action for personal injuries evidence of injuries from other and previous accidents, evidence as to the distance at which a street car could have been heard on the night in question and evidence as to the plaintiff's habits in the excessive use of intoxicating liquors when carefully confined by the judge to the issue of damages are admissible.

Morrissey v. Conn. Valley St. Ry. 233-554

Evidence which is incompetent if admitted without objection is entitled to its probative force.

Douglas v. Holyoke Machine Co. 233-573

Evidence is admissible of an agreement made pendente lite between the plaintiff and the defendant.

Bearse v. Lebowich. 234-492

The agreement and declaration of trust of a voluntary association is admissible to prove its existence and the authority of the defendants to act for it.

Adams v. Swig. 234-584

Where the answer sets up the satisfaction of the judgment by an accord and satisfaction the defendant may introduce, of the negotia-

tions and of the settlement by accord and satisfaction.

Barnett v. Rosen. 235-244

Certain evidence in an action for personal injuries caused by an accumulation of ice on a sidewalk as to the appearance and conditions of the sidewalk at the time and place of the accident.

Burke v. Kellough. 235-405

Testimony of the defendant that as deputy sheriff he sold the property the price the property was sold for and the testimony of the warehouseman that the plaintiff had made arrangements with him for the storage of the property is competent.

Koski v. Haskins. 236-346

Trial of an indictment for arson against several defendants. Admissibility of evidence tending to show that certain of the defendants participated in fires in the building in question.

Com. v. Leventhal 236-516

Held that the book of rules and certain general orders or regulations of the defendant street railway for the operation of cars were properly admitted.

Bilodeau v. Fitchburg & Leominster St. Ry. 236-526

Petition for the registration of the title to certain land where the respondent claims title under certain tax deeds evidence of the assessments, tax lists and advertisements of sale are admissible on the question of the validity of the tax sales.

McDonough v. Everett . . 237-378

In an action by a wife to test the validity of a note and mortgage of personal property given by her deceased husband to his mother evidence of witness "R" who was employed by the deceased as his bookkeeper and certain fire insurance policies covering the property described in the mortgage and not made payable to the defendant as mortgagee in case of loss properly admitted.

Doane v. Doane. 238-106

Admissibility in evidence, at the trial of a divorce libel for cruel and abusive treatment, of a conversation between the libellee and a certain physician, of letters exchanged between the parties and the mean-

ing of certain words contained therein, the date of the registration of the physician's automobile, of cash books kept by the libellant showing household expenses and a certain dentist's card.

Freeman v. Freeman 238-150

Action of damages for breach of contract for the sale of goods. Held that the original memorandum of sale and the carbon copy were competent evidence.

Jacobson v. Perman 238-445

2 WHAT IS IRRELEVANT

Evidence of an offer of settlement rightfully excluded in an action for a collision between two motor vehicles.

Foley v. Lord 232-368

Any implied warranty inconsistent with an express warranty in a written contract necessarily excluded.

American Historical Society Inc. v. Storer 232-372

Testimony of a telephone operator offered by the defendant rightly excluded as no evidence was offered as to the identity of the person who talked over the telephone to the operator.

Com. v. Harris 232-588

Larner v. Mass. Bonding & Ins. Co. 238-80

Evidence of payment of rent by a former occupant of a store not admissible.

Reidy v. Kennedy 233-514

Evidence as to a statement made by the defendant which statement the defendant afterwards admitted was untrue was admissible.

Com. v. Sherman 234-7

In an action for personal injuries the answers of a street railway company to interrogatories were not competent, against a co-defendant.

McNiff v. Boston Elev. Ry. 234-252

Where horse was injured on the highway while in care of the plaintiff's daughter evidence that at other times it had been seen unattended upon the highway was immaterial.

Kadra v. Middlesex & Boston St. Ry 235-176

Evidence offered by the defendant who was charged with robbery as

to his reputation as a dentist properly excluded.

Com. v. Homer 235-526

Certain evidence of a fellow employee of the plaintiff's intestate properly excluded as it had no tendency to contradict anything testified to by the fellow employee.

Labrecque v. Donham 236-10

Evidence offered by the plaintiff is not admissible to show that after his intestate was injured the defendant street railway company erected new gates at both ends of the draw.

Braley v. Mass. Northeastern St. Ry. 236-275

Evidence tending to prove similar but distinct crimes committed by the defendant is not admissible to show that he is guilty of the crime charged.

Com. v. Leventhal 236-516

Evidence offered to show that the method of investigation pursued by the witness was "disapproved of by the United States Government" properly excluded.

Com. v. Porter 237-1

Where evidence otherwise inadmissible goes in without objection the question of admissibility is not open. The party claiming to be aggrieved must either except, or move that the testimony alleged to be incompetent should be stricken out.

Hollis v. Lynn 237-135

Action of contract upon an account annexed against a contractor for the balance alleged to be due upon the purchase price of materials billed and shipped to the defendants the principal contractor said materials being ordered by a sub-contractor for use by him under a contract with the defendants. Held that certain evidence offered by the defendants as to payments made by them to the sub-contractor, and as to the completion of the work by the sub-contractor was irrelevant and that its exclusion was no error of law.

Sanderson v. Carroll 238-142

Action for negligence of a title examiner. The order blank so called offered by the defendant as a part of its "system of keeping books" was properly rejected as evidence.

Dorr v. Mass. Title Ins. Co. 238-490

3 REBUTTAL

Exclusion of certain evidence in, a matter of discretion in an action for injury caused by a collision.

McNeil v. Middlesex & Boston St. Ry 233-254

A trial judge may exclude evidence in, which should have been introduced as a part of the plaintiff's case in chief.

Vallen v. Cullen 238-145

XVII Res Inter Allos

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In a suit to cancel and annul a deed alleged to have been procured by undue influence exercised by the defendant a declaration of a daughter of the defendant excluded as being clearly.

Wright v. Fisher 234-70

Where the defendant was an officer of a corporation certain statements made by counsel for that corporation in a suit by the present plaintiff against the corporation were rightly excluded in this action the defendant not having been a party or privy to the other action.

Porter v. Rust 238-526

XVIII Secondary

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1 GENERALLY

(No case found)

2 ATTENDING WITNESS

(No case found)

3 CERTIFICATES

(No case found)

4 COPIES

(No case found)

5 WRITINGS

Defendant's failure to answer a self-serving letter of the plaintiff or the facts that the defendant referred to and acknowledged the receipt of the self-serving letter in a letter sent by him in reply does not make such self-serving letter admissible.

Sargent v. Lord 232-585

In a suit to cancel and annul a deed alleged to have been procured by undue influence exercised by the defendant a letter written by the husband of the defendant properly excluded as being the act or statement of a third person.

Wright v. Fisher 234-70

A letter from defendant to plaintiff in part an offer of compromise admissible in an action on the original contract. A letter in reply from the plaintiff to the defendant inadmissible being self-serving and incompetent.

Wagman v. Ziskind 234-509

Certain letters from the defendant to the complainant in a bastardy complaint admissible to establish and characterize the intimacy between the parties.

Com. v. Brophy 235-438

Testimony as to the contents of a clipping from a newspaper rightly admitted.

Com. v. Porter 237-1

A written statement produced by the plaintiff's counsel and handed to the witness who examined it and without objection read it to the jury as his testimony. The counsel for the defendant then asked the plaintiff's counsel for the statement it was handed to him, he inspected it and asked the witness questions as to it. Held that the statement was properly excluded when offered by the plaintiff as evidence.

Capodilupo v. F. W. Stock & Sons
237-550

Action for breach of contract. Held that letters showing the making of another contract between the same parties and evidence that it had been fully performed were rightly excluded.

Reliance Waste Co. v. Waterhead Mills Inc. 238-496

6 VARIOUS CASES

Admission of photographs in, is discretionary. The fact that the jury later took a view of the scene shown by the photograph did not render it incompetent.

Morrissey v. Conn. Valley St. Ry.
233-554

Value and use of X-ray pictures or photographs in evidence.

Davis v. Boston Elev. Ry. 235-482

XIX Value

Action of negligence against a title examiner. Held that the assessor's valuation of the property was not admissible to determine its.

Dorr v. Mass. Title Ins. Co.
238-490

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EXCEPTIONS

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I When Exceptions Lie**II When Exceptions Do Not Lie****1 GENERALLY****2 DISCRETION, MATTERS OF****3 FACT, MATTERS OF****4 IMMATERIAL MATTERS****III What Is Open on Exceptions****IV What Bill Should Set Forth****V Amendment****VI Entry****VII Establishment****VIII Filing Presentation and Allowance****IX Judgment Upon****X Practice****XI Taking****XII Waiver****I When Exceptions Lie**

Where instruction asked for was sufficient to call the judge's attention to a principle of law which is not adverted to by the judge in his charge.

Bergeron v. Forest 233-392

To judge's charge as to the care to be exercised by the motorman of a street car and the refusal by the judge to give the instruction asked for as to the effect of the intoxication of the plaintiff's intestate on his right of recovery.

Labrecque v. Donham 236-10

Action thereon in his own name by the assignee of a non-negotiable chose in action. Exception of the defendant sustained on the ground that the assignment was not in writing.

Pritchard v. Uphams Corner Theatre Co. 238-441

II When Exceptions Do Not Lie**1 GENERALLY**

To the exclusion of a question asked a witness on cross-examination where it does not appear that it was asked for the purpose of impeaching the testimony of the witness.

Riley v. Mills 232-86

To refusal of a judge to make a ruling when all the evidence is not reported.

Garratt-Ford Co. v. Brennan
232-493

To the refusal of a judge to direct a verdict for the defendant when there is evidence to support a verdict for the plaintiff.

White v. Weston 232-516

An exception to the denial of a motion that a verdict be ordered for the defendant rightly denied, when.

Canney v. Foss 232-560

General exceptions to specific portions of a charge where no requests are asked for, will not be sustained unless substantial error or injustice plainly appears.

Cronin v. Boston Elev. Ry.
233-243

To refusals to order interrogatories to be answered ought not to be sustained unless there is solid foundation for belief that substantial injury has resulted.

Cutter v. Cooper 234-307

For reasons stated an exception to rule as to the due care of the plaintiff in an action for personal injuries overruled.

Neafsey v. Szemeta 235-160

To the exclusion of certain questions to witness where no offer was made showing the answer expected.

Goldsmith v. Traveler Shoe Co.
236-111

To the denial of a motion to amend the exceptions, when.

Porter v. Travellers Ins. Co.
236-524

2 DISCRETION, MATTERS OF

Exception to denial of motion that the defendant disclose the names and addresses of its witnesses overruled.

McNeil v. Middlesex & Boston St. Ry. 233-254

To refusal of trial judge to submit special questions to the jury.
Mercier v. Union St. Ry....234-85

To the order in which relevant evidence shall be introduced.
Bilodeau v. Fitchburg & Leominster St. Ry.236-526

3 FACTS, MATTERS OF Vol. I, P. 203

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To refusal of judge of the Land Court to make specific findings of.
Prentiss v. Gloucester.....236-36

Findings of fact by a judge sitting without a jury must stand if supported by any foundation in evidence.
N. E. Coca Cola etc. Co. v. Gallagher Bottle etc. Co......236-60

To the refusal of a single justice to rule on the question of the value of the legal services rendered by an attorney for an estate, overruled, the whole controversy between the parties being purely one of fact.
Wordell v. Grim236-406

Exceptions may be alleged by any party who is aggrieved by an "opinion ruling, direction or judgment." A finding of fact is in no proper sense an "opinion, ruling, direction or judgment."
Porter v. Porter236-422

To the denial of requests for findings of fact in an action at law.
Title Guaranty & Surety Co. v. Ley & Co. Inc......238-113

4 IMMATERIAL MATTERS

Exceptions of the claimant named by the defendant in an interpleader overruled because the ownership of the ice at the time of resale was immaterial.

Underwood v. Coolidge Ice Co.
 232-124

To "refusal to rule as I have requested" where such refusal did not injuriously affect the substantial rights of the parties.

Canney v. Foss232-560

An exception to an instruction to the jury rendered immaterial by the the findings of the jury.

Crowdis v. Hayward.....233-377

Where exceptions were not argued and the judge stated to the jury in substance that he should exclude the evidence.

Mercier v. Union St. Ry....234-85

To admission of evidence not harmful to excepting party.

Clapp v. Amer. Express Co.
 234-174

Will not be sustained to the charge of the trial judge unless on the evidence it appears that the substantial rights of the excepting party were impaired.

Wonoalancet Co. v. Collins, Plass Thayer Co......234-427

Plaintiff's, overruled where plaintiff not harmed by the ruling of the court.

White v. E. T. Slattery Co.
 236-28

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III What Is Open on Exceptions

It is not open to excepting party to contend that certain evidence is incompetent if no exception was taken to its admissions at the trial.

Wilder v. General Motorcycle Sales Co......232-305

Where excepting party did not except to the failure of the judge to give the ruling in terms nor called the judge's attention to the fact that he had not made the principle of law in question sufficiently clear by his charge.

Hall v. Com.235-1

A decision of the Superior Court upon questions raised on a plea in abatement to an indictment or complaint is made final and not open to exception by G. L. C. 278 §§ 27, 28, 31.

Com. v. Kozlowsky.....238-379

IV What Bill Should Set Forth

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Brevity is desirable in the statement of. But a bill of, must be of such fulness as to present fairly the opinion, ruling, direction or judgment to which, is saved with adequate reference to the evidence,

the issues and the course of trial to enable this court to understand the questions of law raised, and to determine whether the alleged error of law has injuriously affected the substantial rights of the parties. Use of the words "plaintiff claimed" and "defendant contended" by the defendant in his bill of, not an "adequate reference to the evidence."

Rosen Petitioner 236-321

Exceptions overruled where the bill failed to show enough to enable the court to determine whether harmful error was done and where it cannot be said that the inference of harm is so strong as to warrant a decision that the judge erred in his ruling.

Posell v. Herscovitz 237-513

V Amendment

Where plaintiff was permitted by the judge to amend its bill of, according to the form prepared by him, the plaintiff was obliged either to accept or reject that permission unqualifiedly.

Barnard Manuf. Co. v. Eugen C. Andres Co. 234-148

Held that a denial of a motion to amend, was right.

Porter v. Travellers Ins. Co. 236-524

VI Entry

(No case found)

VII Establishment

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A finding by a judge of the Superior Court that no sufficient notice was given of the filing of a bill of, and a dismissal of the, for that reason cannot be reviewed by the full court.

Day Pet'r 234-576

In an action to recover a commission on the sale of real estate a petition to establish, was dismissed as the, were not conformable to the truth within the meaning of the statute.

Nielson's Case 236-1

Petition to establish, dismissed because the petitioner failed to establish the truth of his. Held that under the circumstances in this case

the general rule that proceedings for the, of, are regarded as "strictissimi juris" applies with peculiar force.

Rosen Petitioner 236-321

Held that the bill of, declares error and its allowance by the judge establishes the truth of the

Gale v. Dwyer 238-509

VIII Filing, Presentation and Allowance

On facts held that bill of, was not allowed, Rule 54 Superior Court (1915).

Barnard Manuf. Co. v. Eugen C. Andres Co. 234-148

Held that the plaintiff did not give to the defendants the required notice of the filing of the. Rules 28 and 52 of the Superior Court (1915)

Day v. McClellan 236-330

IX Judgment Upon

(No case found)

X Practice

A ruling of law signed by the judge and inserted in the record with a statement that the plaintiff's counsel excepted is not a bill of, or a report.

Cutter v. Cooper 234-307

XI Taking

An, to the argument of counsel overruled because not properly taken.

Chase v. Boston Elev. Ry. 232-133

On case as stated it was held that the exception to the order directing a verdict was legally saved.

Cotter Pet'r 237-68

XII Waiver

Held that an exception not having been argued was treated as waived.

Burdett v. Walsh 235-153

Exception overruled because the question in itself could not be harmful and the answer if harmful was waived.

Burke v. Kellough 235-405

As to, of the right to insist upon compliance with the rules as to the giving of a notice in writing of the filing of.

Day v. McClellan 236-330

EXCISE TAX

See Tax I, III, V, VII, X

EXECUTION

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- I In General**
- II Arrest**
- III Discharge**
- IV Levy on Land**
- V Levy on Personality**

I In General

(No case found)

II Arrest

An officer having in his hands an, authorizing the, of a judgment debtor is not obliged before making an, thereon to demand payment or to search for property on which to levy the.

Brazill v. Green 236-93

III Discharge

(No case found)

IV Levy on Land

Officer's return on execution held to be sufficient under R. L. C. 178 § 49.

Day v. Boulle 234-25

Attachment of registered real estate of a corporation. Levy on execution during pendency of proceedings for the appointment of a receiver of the corporation. As the property was in the custody of the law when the execution was levied it was not subject to seizure and execution without leave of court. Held that the sale on execution was wholly illegal and void.

Davis v. Mazzuchelli . . . 238-550

V Levy on Personality

(No case found)

See Bankruptcy, Officer, Receiver.

EXECUTOR AND ADMINISTRATOR

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- I Appointment and Removal**
- II Accounting**
- III Actions**
 - 1 WHEN LIE BY
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- IV Ancillary Administration**
- V Assets**
- VI Bond**
- VII Contribution**
- VIII Distribution**
- IX Executor de Son Tort**
- X Insolvency**
- XI Liabilities**
- XII Powers**
- XIII Sale**

I Appointment and Removal

On facts administrator found not to be a suitable person and the decree of the Probate Court appointing him should be reversed.

Martin v. Otis 233-491

Where two petitioners D. and C. sought appointment as administrator with the will annexed of the estate not already administered of one W. Held that the petitioner C. the executor of the will of the deceased widow of W. who had been executrix of the will of W. was not entitled as a matter of law or as of right to be appointed administrator of the remaining estate of W.

Davis petitioner 237-47

II Accounting

(No case found)

III Actions**1 WHEN LIE BY**

One named as executor in a will although not appointed as such may maintain a suit in equity to enjoin the testator's widow from contesting the will.

Eaton v. Eaton 233-351

2 WHEN LIE AGAINST
(No case found)

3 PROCEDURE

A plaintiff cannot enforce in this jurisdiction by suit against the domiciliary administratrix the judgment obtained against the ancillary administrator in another state.
Leach v. Leach238-100

IV Ancillary Administration
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A plaintiff cannot enforce in this jurisdiction by suit against the domiciliary administratrix the judgment obtained against the ancillary administrator in another state.
Leach v. Leach238-100

V Assets

The title to the personal property of a deceased person from the time of his death vests in his executor or administrator until the final settlement of the estate is made in the Probate Court.
S. S. Pierce Co. v. Fiske...237-39

VI Bond

(No case found)

VII Contribution

(No case found)

VIII Distribution

(No case found)

IX Executor de Son Tort

(No case found)

X Insolvency

(No case found)

XI Liabilities

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(No case found)

XII Powers

The Probate Court has power to authorize a special administrator pending the question of the allowance of the will to prosecute a pending suit or bring a new one in order

to preserve the property of the deceased for the executor or administrator when appointed.

Purcell v. Purcell.....233-62

XIII Sale

Of real estate by the executor to pay the inheritance tax where devisee refuses to pay the tax. Form of petition by executor. Not a reversible error if Treasurer and Receiver General not joined as a party.

Lane v. Richardson.....234-403

See Constitutional Law III, Costs 19. Statute of Limitations X. Tax II, III. Trust IX. Witness III-4.

EXECUTOR DEVISE

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EXPOSURE OF PERSON

(No case found)

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See Easement, Way

EXTORTION

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EXTRADITION

The governor may consider evidence outside the papers sent with the requisition.

Grave's Case236-493

A warrant issued by the governor in, proceedings which conforms to the requirement of the statute and is proper in form makes out a prima facie case.

Grave's Case236-493

See Arrest, Habeas Corpus

**FACTOR AND
COMMISSION MERCHANT**

See Agency

FACTORY

(No case found)

FALL RIVER

See Receiver

**FALSE IMPRISON-
MENT**

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Action of damages for the, of the plaintiff for alleged larceny of goods by the plaintiff from the store of the defendant.

Zinkfein v. W. T. Grant Co.
236-228

See Marriage

FALSE PERSONIFICATION OF AN OFFICER

(No case found)

FALSE PRETENSES

(No case found)

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A note and mortgage of personal property given by the deceased to his mother for the purpose and with the intention of preventing his wife from reaching his property in any proceedings brought by her against him to secure her marital rights to support and maintenance is void as against her.

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The objection that the, against the prisoner was invalid by reason of the presence of persons before the grand jury cannot be raised by a petition for a writ of habeas corpus and by a writ of error after a general plea of "not guilty" a trial, a verdict of guilty, and a sentence. Constitutional rights of a defendant under, must be asserted seasonably.

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Of acquittal of the defendant on the charge of being a lewd person is not a defence to an, charging him with keeping a disorderly house.

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Acquittal of the defendant on the charge of being a lewd person is not a defence to an, charging him with keeping a disorderly house.

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XXVI Repugnancy

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XXVIII Surplusage

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Action against the proprietor of a hotel and restaurant by a guest

alleging malicious prosecution of the plaintiff on a charge of drunkenness.

Mason v. Jacot235-521

Where the plaintiffs who were husband and wife and guests of the defendant an, charged the defendant with trespass, assault and battery, false imprisonment, false arrest and slander. The guest is entitled to respectful and considerate treatment at the hands of the, and his employees and servants and this right, created an implied obligation that neither the, nor his servants will abuse or insult the guest or engage in any conduct or speech which may unreasonably subject him to physical discomfort or distress of mind or imperil his safety. Judgment for the plaintiffs.

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The Massachusetts commission on mental diseases have a right of appeal from a decree of the Probate Court dismissing a petition filed by them for the appointment of guardian for an insane person.

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Only the witnesses to the will the testator's family physician and the mental experts are competent to give their opinions of the testator's mental condition.

Old Colony Tr. Co. v. Di Cola
233-119

There is no "desertion" as a cause for a divorce where the libellee was insane for almost the whole period of the "three consecutive years next prior to the filing of the libel."

Hartwell v. Hartwell234-250

A deed of an insane person is voidable and may after the grantor is restored to his right mind be adopted and ratified.

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INSURANCE

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In an action on a policy of liability, held that the plaintiff did not give the "immediate" notice as required by his policy. No evidence of intention to waive such condition on the part of the defendant's manager.

Boston Elev. Ry. Co. v. Maryland Casualty Co. 232-246

On facts held that the death of the insured did not result from the accident "alone and independent of all other causes" as "the proximate, sole and only cause" within the meaning of words in the contract sued upon.

Leland v. United Com'l Travelers of America 233-558

Of an automobile against theft. Failure of insured to give the required notice of loss. Held that there was no waiver of the required notice by the insurance company.

Navickis v. Fireman's Fund Ins. Co. 235-256

Of an automobile against theft. Held that the plaintiff could not recover because he was not when the policy was issued the sole and unconditional owner of the automobile.

Ballard v. Globe & Rutgers Fire Ins. Co. 237-34

Action by a mortgagee to recover of the, defendant title, company the value of the plaintiff's title as mortgagee to certain land. Held that there was evidence warranting a finding that the plaintiff's deed to one S. and the mortgage back to the plaintiff were shams and were executed because the plaintiff thought he could sell the mortgage easier than the land.

Clarke v. Mass. Title Ins. Co. 237-155

Two separate actions upon two policies of, for loss suffered by the plaintiffs by reason of damage by a flood to wool while in storage in a warehouse. Held that the wool in question was not in storage as a part of or incident to transportation. Words "actually in transit" "transportation" "risks of—transportation" in policies construed. Held that the losses incurred were not covered by the policies.

Koshland v. Columbia Ins. Co. 237-467

Williams v. Mannheim Ins. Co. 237-477

Burglary. Held that proofs of loss were not furnished to the company as provided for by the terms of the policy.

Larner v. Mass. Bonding & Ins. Co. 238-80

II Fire Insurance

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1 GENERALLY

A Policy of, is binding upon the insurer although it was issued in violation of the requirements of the insurance law.

Austin v. Dixie Fire Ins. Co. 232-214

Clause in a policy of, entitled "Demolition and Increased Cost of Construction" construed. Held that this clause did not apply where there was a total loss.

King v. Niagara Fire Ins. Co. 234-301

Liability of an, agent on an oral agreement by him to procure and deliver to the plaintiff a valid policy of.

Cass v. Lord 236-430

"Running policy" of, on automobiles with slip or rider "Dealer's Form-Automobiles" attached construed. It is of no consequence that the plaintiff did not read the policy or the accompanying rider, or "know a single condition in" it, but accepted and kept it in his safe until the fire. He is bound by the contract into which he voluntarily entered. It cannot be varied or modified by prior negotiations as narrated by the plaintiff or overcome by invoking the aid of the doctrines of waiver and estoppel based on his interviews at any time with the company's agents after he received and accepted the policy.

Cass v. Lord 236-430

Foreclosure of a mortgage of personal property because of a breach of condition thereof i. e. failure of the mortgagor to procure, on the mortgaged property.

Lawlor v. Dowd 237-569

2 ACTIONS

In an action to recover upon a oral contract of. On facts held that an insurance broker had no authority express or implied to act as agent for the defendant.

Sheridan v. Mass. Fire & Marine Ins. Co. 233-479

Two, of contract to recover upon oral contracts of fire, the oral contracts being made through an insurance broker acting on behalf of the plaintiff and one W. claimed by the plaintiff to have authority as agent to bind the defendant. Held that an agent empowered to counter-

sign and issue policies may as incidental to his authority make oral contracts for temporary protection of the owner in case of fire.

Park & Pollard Co. v. Agricultural Ins. Co. 238-187

Action upon a policy. Disagreement as to the amount of loss. Failure to submit the amount of loss to three disinterested men. Held that the action could not be maintained as there had been no reference as required by the policy and no waiver of reference by the company such reference being a condition precedent to any right of action in law or equity to recover for such loss.

Nadeau v. Ins. Co. of Penn. 238-462

3 ALIENATION

(No case found)

4 ASSESSMENTS

(No case found)

5 ASSIGNMENT

(No case found)

6 FORFEITURE

Lapse of policy during the life of the assured because of non-payment of the premiums payable weekly with a "grace period of four weeks." Reinstatements by agent by acceptance of overdue premiums. Statements of an agent as to the lapsing of policy held not sufficient to modify the policy or to constitute a waiver of its provisions.

Hayes v. Metropolitan Life Ins. Co. 236-476

7 INSURABLE INTEREST

On facts held that the plaintiff had an equitable interest in the property which was insurable.

Morrison v. Boston Ins. Co. 234-453

Held that the plaintiff the trustee in bankruptcy as well as the defendant to whom the bankrupt had conveyed the property in fraud of his creditors had an, in such property at the date of the policies and of the fire. The plaintiff if he does not insure has no right to the proceeds of the policies placed on the prop-

erty by the defendant at its expense and for its sole benefit.

Underwood v. Winslow . . 234-550

8 NOTICE AND PROOF OF LOSS

Where a second policy of, did not become binding on the property because of a clause in it forbidding other insurance a statement made by the insured in a proof of loss under the first policy (which contained a clause permitting other insurance) that the first policy was "the only insurance in effect" is true.

Koeski v. Springfield Fire & Marine Ins. Co. 234-23

9 OTHER INSURANCE

Defendant companies liability not affected by the fact that the plaintiff had, or that such, covered also other property.

Austin v. Dixie Fire Ins. Co. 232-214

10 PREMIUM

The agency of a firm of, brokers may be terminated by a demand for the payment of the, s made by the company on the insured. Such, s so demanded cannot be collected by the receiver of the brokers.

Ide v. Aetna Ins. Co. 232-523

11 RECOVERY

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Amount recoverable on two fire insurances policies where the plaintiff had already received from a third fire insurance company a sum of money in settlement of his loss under that policy. No right of subrogation on part of the defendant companies limited to the actual value of the insured property at the time of loss or damage.

King v. Niagara Fire Ins. Co. 234-301

12 REPRESENTATIONS AND WARRANTIES

A mortgage held by a third person found not to be a valid encumbrance the non-disclosure of which in the application avoided the policy or rendered the proof of loss where it is not mentioned a fraudulent misrepresentation.

Morrison v. Boston Ins. Co. 234-453

13 Risk

(No case found)

III Foreign Companies

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(No case found)

IV Life Insurance

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1 GENERALLY

(No case found)

2 ACTIONS

(No case found)

3 ASSIGNMENT

Where the policy is payable to the legal representatives of the insured an, by one of the next of kin and heirs at law of the insured in case he dies intestate of his interest in such policy is enforceable in equity if it was made during the lifetime of the insured and if the insured dies intestate.

Sloan v. Breeden233-418

Where the beneficiary and the insured executed an, to one from whom the insured had borrowed a sum of money. The insured also gave the assignee a promissory note signed by him and bearing the forged signature of the beneficiary. The, contained no mention of a note nor of the fact that it was executed as security. Held that a finding was warranted that the assignee held the policy as a pledge for the payment of the money advanced and interest by virtue of the, and that the claim of the assignee to the extent of the amount due was superior to that of the trustee in bankruptcy of the beneficiary.

Conn. Mutual Life Ins. Co. v. Allen.....235-187

Where an, gave to the assignees the right to surrender the policy "at any anniversary of issue" and to receive the cash surrender value thereof. Words "at any anniversary of issue" construed.

Coleman v. N. E. Mutual Life Ins. Co.....236-552

Where an insolvent husband assigned a, policy payable to his wife as security for a loan. The husband remained insolvent and continued

to pay the premium due on the policy until his death. Disposition of the proceeds of the policy over and above the loan and interest between the administrator of the estate of the husband and the trustee in bankruptcy of the wife.

Penn. Mutual Life Ins. Co. v. Hunt237-241

4 FORFEITURE

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5 INSURABLE INTEREST

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6 PROOF OF DEATH

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7 REPRESENTATIONS AND WARRANTIES

(No case found)

8 RISK

(No case found)

V Marine Insurance

(No case found)

VI Mutual Companies

(No case found)

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See Indictment

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I In General**II Agents****III Computation****I In General**

As to charging without authority by collector of, on an unpaid tax.

Kelly v. O'Rourke232-168

Treasurer and collector of taxes of city not required to put the money of the city at interest.

Lowell v. Stiles 232-341

The insured having been enjoined by the insurance company from making payments of premiums to the insurance brokers he is not chargeable with.

Ide v. Aetna Ins. Co. 232-523

As to the right of a bank to retain, paid in advance on a note or, retained from the net proceeds of the sale of collateral pledged with it to secure the payment of the note and, "to maturity."

Gaston v. Penny Savings Bank
233-23

Where petitioner agreed to accept a certain sum "in full of damages" caused by the taking of his land for highway purposes he is entitled to no.

King v. Springfield 233-592

Where a town voluntarily rebuilt a bridge over a railroad it was held that it was not entitled to, on the amount expended by it and thereafter apportioned upon the railroad.

Selectmen of Brookline Petitioners
236-260

Held that the plaintiff was not entitled to, on money which was held by the defendant as security after it was due and payable to the plaintiff on account of the contract price for the building of a school house by the plaintiff for the defendant.

Goldman v. Worcester ... 236-319

Action for failure to comply with a contract for making machine parts. Due the plaintiff on his investment in the machine.

Gale v. Dwyer 238-509

II Agents

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III Computation

Where there is no agreement as to the amount of wages to be paid to the plaintiff, is allowed only from the date of the writ.

McGrimley v. Hill 232-462

Where a bank contested liability in a suit in equity to recover certain funds in its possession it was held

that the bank should pay, thereon from the date of the filing of the bill.

Dailey v. Doherty 237-365

A verdict is first to be returned and recorded and, thereon is to be added by the clerk from the date of the verdict and this amount bears, to the date of entering the judgment upon which execution issues.

Nugent v. Boston Consolidated Gas Co. 238-221

Claims on account of construction of a public work. Held that, on the claims as allowed should run from the filing of intervening petitions and not from the filing of the sworn statements of claim.

Otis Elevator Co. v. Long 238-257

In an action for breach of contract. Held that the plaintiff was entitled to, from the date of the writ.

Mt. Pleasant Stable Co. v. Steinberg 238-567

INTERNAL REVENUE

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INTERNATIONAL AWARD

(No case found)

INTERNATIONAL LAW

See Conflict of Laws

INTERPLEADER

Held that the claimant the holder of a note was properly before the the court in, proceedings, that the defendant bank held the money as a mere stakeholder and that a finding for the claimant was warranted where money was alleged to have been paid to the defendant by the plaintiff by mistake.

Roberts v. United States Tr. Co.
234-224

Where claimant is summoned as a new defendant in, proceedings the trial is between the plaintiff and the claimant the original defendant is not a party.

Roberts v. United States Tr. Co.
234-224

See Equity XI

INTERPRETER

(No case found)

INTERROGATORIES

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In an action for personal injuries the answers of a street railway to, were not competent evidence against a co-defendant.

McNiff v. Boston Elev. Ry. Co.
234-252

Action for alienation of the affection of and for criminal conversation with the plaintiff's wife by the defendant. Refusal of plaintiff to answer, of defendant. Scope of. Ordering of answers to, by the court. Right of defendant to interrogate plaintiff. Exceptions to refusals to order answers to, not to be sustained when. Plaintiff properly ordered to answer, as to trips by him to California, adequacy of support of his wife, his use of intoxicating liquors, as to whether he was faithful to his marriage vows, and as to whether there were any children by his marriage. Exceptions to refusal of court to order the plaintiff to answer certain other, overruled.

Cutter v. Cooper 234-307

Default for failure to answer. After answers to, are filed there must be an adjudication that the answers are imperfect and the interrogated party be given an opportunity to amend them before nonsuit or default can be entered.

Hooton v. G. F. Redmond & Co. Inc. 237-508

INTERSTATE COMMERCE

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A person carrying passengers for hire from a city in another state to a city in this commonwealth is engaged in.

Com. v. O'Neill 233-535

St. 1918 C. 253 as to taxation on the income of foreign corporations is valid and does not impose a direct burden upon.

H. P. Hood & Sons v. Com.
235-572

Where plaintiff a drawbridge tender was injured while instructing

another employee in relation to the, operation of the drawbridge. Held that the plaintiff when injured was engaged in.

Desmond v. B. & M. R. R.
237-236

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INTOXICATING LIQUORS

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Recovery against a saloon keeper of penalties provided by R. L. C. 100 § 62 for selling, to the plaintiff's minor son and for allowing him to loiter upon the premises where such sales were made.

R. L. C. 100 § 62 creates three separate and distinct causes of action.

Malhoit v. Burn 235-559

Jurisdiction of the courts of the Commonwealth in cases involving the sale of, since the passage of the Eighteenth Amendment to the Constitution of the United States and of 41 U. S. Statutes at Large, 305, the national prohibition act commonly called the Volstead Act. Definition of.

Com. v. Nickerson 236-281

Trial on agreed facts of a complaint charging that the defendant "did unlawfully sell intoxicating liquor to wit Jamaica ginger." Jamaica ginger is not an, within the meaning of R. L. C. 100 § 2 unless it is shown to be a "beverage," that is to say, a liquor for drinking. The mere fact that it contains a large percentage of alcohol does not make it "intoxicating liquor" within the meaning of the statute. Held that there was no evidence that the article sold was fit for beverage purposes much less that it was ordinarily so used, that a verdict of guilty was not warranted and that the issue as to whether Jamaica ginger was an intoxicating beverage was one of fact for the jury.

Com. v. Sooke 236-448

Sale of "non-intoxicating beverages." The main purpose of G. L. C. 138 is the prohibition of the sale of, as a beverage. The valid and enforceable parts of C. 138 are so independent of the inoperative portions as to lead to the conclu-

sion that they would have been enacted apart from the latter. The several sections of the chapter are not so mutually dependent upon each other as to require the belief that they were intended to be an indivisible unit. The valid parts can be separately enforced and thus enforced will effectuate the main purpose of the General Court and of the Eighteenth Amendment.

Jones v. Selectmen of Weston
238-218

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INTOXICATION

See Drunkenness, Automobile III.

Effect of voluntary, of the plaintiff on his right of recovery in an action for personal injuries.

Bilodeau v. Fitchburg & Leominster St. Ry.236-526

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(No case found)

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JOINT TORT-FEASORS

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A release of one joint tortfeasor releases all the wrongdoers
 Cormier v. Worcester Cons. St. Ry 234-193

Held that the defendants could be found to be. Measure of recovery against.

Nugent v. Boston Consolidated Gas Co. 238-221

Held that a corporation without capital stock organized under R. L. C. 125 §§ 1, 2, may maintain an action of tort for libel against two publishing houses as.

Finnish Temperance Soc. v. Socialistic Pub. Co. 238-345

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JUDGMENT AND DECREE

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I In General**II Actions Upon****III Arrest of Judgment****IV Former Judgments****V Foreign****VI Nunc pro Tunc****I In General**

On an auditor's report. Held that the finding for the defendants imported a finding in their favor of all the subsidiary facts essential to that conclusion.

Bendsley v. Lovell 235-133

Motion by defendant to vacate the judgment and to strike out the the plaintiff's discontinuance denied.

Marsch v. Southern N. E. R. R. 235-304

A writ of error to the United States Supreme Court does not vacate a final, of the Superior Court. Held that in the case at bar the, never was reversed and hence was never vacated. Defendant's request to set aside the, and plaintiff's request for affirmation of the, rightly denied.

Duart v. Simmons 236-225

The granting of a motion to vacate, is largely discretionary. Held that there was nothing to show failure to exercise sound judgment.

Porter v. Travellers Ins. Co. 236-524

Vacating of decrees of the Probate Court discharging the surety on a trustee's bond and allowing the first, second, third, fourth, fifth and sixth accounts of the trustee.

Withington v. Fidelity & Casualty Co. 237-73

Allowance of motion for judgment according to an auditor's report.

Wheeler v. Tarullo. 237-306

Words "ripe for judgment" defined.

Lynn Gas & Elec. Co. v. Creditors Nat. Clearing House, Inc. 237-505

The entry of default was not the equivalent of a final judgment.

Hooton v. G. F. Redmond & Co. Inc. 237-508

A case which has been finally determined automatically goes to judgment at the time named in the rules even if no record is made on the docket.

Nugent v. Boston Consolidated Gas Co. 238-221

Where there was a delay of over a year in filing a draft report. Held that the case went to judgment automatically under R. L. C. 177 § 1 and Rule 57 (1915) of the Superior Court even though no actual entry to that effect was made by the clerk.

Porter v. Boston Storage Warehouse Co. 238-298

Where an exception to the amount found due the plaintiff was allowed and a judgment for the plaintiff was entered under G. L. C. 231 § 124.

Gale v. Dwyer. 238-509

II Action Upon

On facts held that judgment was not satisfied and surety may enforce payment by the judgment debtor of the alias execution.

Green v. Justices of the Municipal Court of the City of Boston
232-553

A judgment assigned by the judgment creditor to his counsel in payment for professional services. Action properly brought in the name of the assignor where the assignee has the sole beneficial interest. Docket entries until extended in books of record are admissible to prove the recovery of a domestic judgment which cannot be attacked collaterally but is reversible only on writ of error.

Heard v. Calkins. 234-526

Action by a receiver appointed by a U. S. Court of a foreign corporation to recover from a Massachusetts stockholder the balance alleged to be due on the stock standing in her name on the books of the company. Held that the decree of the U. S. Court entering a "judgment and order for assessment against stockholders" ordering the receiver to collect by suit if necessary is binding on the defendant except as to "personal defences."

Butterworth v. Ross. 238-279

III Arrest of Judgment

Bill in equity to enjoin the enforcement of a, recovered against a man and his wife in an action at law.

Karrick v. Trask. 238-476

IV Former Judgments

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A judgment in a son's action for personal injuries is no bar to an

action by the father for loss of services and money expended.

McGreevey v. Boston Elev. Ry.
232-347

Evidence as to eviction and surrender of a lease wrongfully excluded as res judicata.

Reidy v. Kennedy. 233-514

A decision of the full court held not res judicata because no final decree had been made in that court after rescript.

Renwick v. Macomber. . . 233-530

The decision in Diebold Safe & Lock Co. v. Morse 225-342 which case was a bill in equity for specific performance of a lease is not a bar to this action which is an action to recover damages for breach of an oral agreement to make a lease.

Diebold Safe & Lock Co. v. Morse
234-17

A judgment in a former action is conclusive only upon those issues which actually were tried and determined in such former action.

Hanzes v. Flavio. 234-320

A judgment in a former action for personal injuries found not to be res judicata to the present case because the two proceedings were not between the same parties or their privies and they were not for the same cause of action.

McAlevey v. Litch. 234-440

Recovery by the plaintiff in the first of two actions brought by him on a contract of employment is not a bar to the second action.

Dalton v. American Ammonia Co. 236-105

On facts held that the findings and judgment of a court in another state did not constitute a bar to the maintenance of the present suit.

Eastman Marble Co. v. Vermont Marble Co. 236-138

V Foreign

The general presumption in favor of the regularity and validity of, held to be strong enough under the circumstances in this case to require the inference that the, in this case was rendered upon the count which it lawfully could have been entered.

Tucker v. Columbia Nat. Life Ins. Co. 232-224

In an action on a, it was held that on the evidence the presumption in favor of the, was not overcome.
Robinson v. Freeman . . . 236-446

VI Nuc pro Tune

(No case found)

See Police District and Municipal Courts, Surety

JURISDICTION

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III Criminal

IV State and Federal Courts

I In General

A court of equity has, over nuisances.

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Want of, in the court over the subject matter of the suit is not waived by a general appearance.
Locomobile Co. of America v. Com. 232-16

Consent or waiver by the parties cannot confer, over a cause which is not vested in the court by law.
Eaton v. Eaton 233-351

Our courts should decline to take, of a suit in equity between two mining corporations both organized in another state and conducting mining in still another state.

Arizona Com'l Mining Co. v. Iron Cap Copper Co. 233-522

Our courts of equity have, within the time specified in the Soldiers' and Sailors' Civil Relief Act to foreclose power of sale mortgages.
John Hancock Mutual Life Ins. Co. v. Lester 234-559

A court acquires no, over a defendant where an attorney without authority accepts service of process and enters appearance for him in court.
Hanzas v. Flavio 234-320

The court has the power to reconsider its decision and correct an error of law of its own motion or at the request of the parties.

Sallinger v. Hughes 235-104

Dismissal of two actions brought by one non-resident mining company against another non-resident mining company for want of.

Arizona Mining Co. v. Iron Cap Copper Co. 236-185

Of the courts of the Commonwealth in cases involving the sale of intoxicating liquors since the passage of the Eighteenth Amendment to the Constitution of the United States and of 41 U. S. Statutes at Large, 305, the national prohibition act commonly called the Volstead Act.

Com. v. Nickerson 236-281

There is a presumption in favor of the regularity of the proceedings of any court of general.

Robinson v. Freeman . . . 236-446

As to the distinction between, and venue. By the general appearance of the defendant the court acquired over the defendant. Thereby the defendant waived any objection which he might have raised as to the faulty venue of the action.

Paige v. Sinclair 237-482

In equity over a foreign corporation and its assts.

Raynes v. Sharp 238-20

Of the court where a bill to enjoin libellous publications was changed into an action of tort for libel.

Finnish Temperance Soc. v. Socialistic Pub. Co. 238-345

II Civil

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Of Superior Court to enforce its decree by contempt proceedings when that decree is based upon a decree of the court of another state.

White v. White 233-39

Of Superior Court in an action for a maritime tort.

Proctor v. Dillon 235-538

Of facts Superior Court held to have had no, to entertain a divorce libel.

Field v. Field 236-256

The Probate Court has, over petitions for separate maintenance. Such right of the Probate Court is not suspended until the Superior Court acts.

Pease v. Pease 237-563

The Superior Court has exclusive of libels for divorce.

Pease v. Pease 237-563

III Criminal

The Superior Court has, under St. 1913 C. 563 § 1 to proceed by indictment against one for bastardy.

Com v. Mekelburg 235-383

IV State and Federal Courts

Judicial notice taken by the full court of the provisions of an order of the Director General of Railroads of the United concerning the venue of certain actions against railroads.

West. v N. Y. N. H. & H. R. R. 233-162

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JURY

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I In General

II Criminal Cases

III Exemption

IV Practice

V Qualifications

VI Talesmen

I In General

A motion for a trial by, in habeas corpus denied.

Graves Case 236-493

When a party does not persist in or rely upon his seasonably claimed right to a, trial or waiving that claim, does not ask that the case be heard by a judge, a proper case is presented for disposition on a motion for judgment upon an auditor's report. Such procedure does not impair the constitutional right to a trial by.

Wheeler v. Tarullo 237-306

Held that the judge was in error in ruling that as a matter of law certain items in the pay-roll books of the plaintiff had not been proven and that they should not go as exhibits to the.

Annawan Mills Inc. v. Managene 237-451

Service of women as jurors. As to requiring and compelling women to serve as jurors.

Opinion of the Justices . . 237-591

II Criminal Cases

Defendant in a criminal case held not to be entitled to a, trial on the question of the right in his official capacity of the Attorney General or a Special Assistant Attorney General to be present at the deliberations of the Grand Jury

Com. v. Kozlowsky 238-379

III Exemption

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IV Practice

Held that the answer of the jury to the oral question of the judge in an action for personal injuries had the force of a special finding of fact.

Cotter Petitioner 237-68

V Qualifications

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VI Talesmen

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See Constitutional Law XI, XX, Grand Jury, Law and Fact.

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KIDNAPPING

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LABOR AND SERVICES

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See Unlawful Interference with Contract.

LABOR UNION

See Unlawful Interference with Contract

LACHES

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Held that bill to establish a resulting trust in land was not barred by.

Boston & Northern St. Ry. v. Goodell. 233-428

Bill to enforce a resulting trust in shares issued by a corporation upon its incorporation not barred by.

Glover v. Waltham Laundry Co. 235-330

Held that the rights of the petitioner, the owner of land bounded on the thread of a stream under a contract with the owner of a dam across the stream were not lost by.

Battelle v. Worcester. . . 236-395

Held that there was no, in bringing a bill for an accounting under an agreement between a savings bank the first mortgagee, and the second and third mortgagee and the owner of the real estate after the death of such owner.

Dailey v. Doherty. 237-365

The plaintiff is held to diligence in action after the discovery of the facts but there cannot be, so long as there is no knowledge of the wrong and no failure to avail oneself of reasonable opportunities to ascertain the facts

O'Brien v. O'Brien 238-403

LAND COURT

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Held finding of, warranted that the relation of landlord and tenant ex-

isted and that no title to the property in question was acquired by adverse possession.

Curtis v. Goodwin. 232-538

Finding of, that respondent's predecessor in title was not in possession of the property under an agreement to purchase held to be conclusive.

Curtis v. Goodwin. 232-538

Findings of fact made in the, cannot be revised by the full court.

Day v. Boulle. 234-25

The, has jurisdiction over a petition for the registration of an adverse claim against registered land.

Lamson v. Coulson. 234-288

Where the adverse claim against registered land was the establishment of a claim to a right of renewal of a lease held that the petitioner had failed to maintain his claim.

Lamson v. Coulson. 234-288

On an appeal from a decree of the, where there were no exceptions taken to the master's report the only question open is whether a decree for the plaintiff is warranted by the pleadings and master's report.

Larsen v. Dillenschneider. . 235-56

The order for registration imports a finding of all the subsidiary facts essential to support it and consistent with the express findings.

Prentiss v. Gloucester. . . . 236-36

A refusal of the judge of the, to make the specific findings of fact requested is not subject to an exception.

Prentiss v. Gloucester. 236-36

Respondents who have had full opportunity to be heard are not aggrieved by the refusal of the judge to give further notice to others who did not appear in the.

Prentiss v. Gloucester. 236-36

Upon an appeal from the only questions of law raised on the record can be considered.

Solovicos v. MacLachlan. . 236-402

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LANDING PLACE

(No case found)

**LANDLORD AND
TENANT**

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I In General

On the evidence as stated a finding was warranted that the relation of, existed between the parties; in determining this question the actual ownership of the premises is only one element to be considered.

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II Denial of Title

Where one enters and continues to hold the locus as a tenant and never renounces his landlord's title he is estopped to deny it in proceedings between them.

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III Emblements

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There can be no recovery for an alleged wrongful, where the plaintiff never received any title under his lease.

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The unsuccessful attempt of a landlord to exterminate objection-

able insects in the demised premises do not constitute a constructive, of the tenant.

Hopkins v. Murphy 233-476

Evidence as to, and surrender of a lease wrongfully excluded as res judicata.

Reidy v. Kennedy 233-514

On facts held that the plaintiff the lessee could not maintain a suit in equity to enjoin the defendant and the lessor from compelling plaintiff to vacant the premises for non-payment of rent under the lease.

Darvirris v. Boston Safe Deposit & Tr. Co. 235-76

On facts held that the plaintiff the lessee could not maintain a suit in equity to enjoin the defendant the lessor from evicting him for breach of a covenant of the lease.

Finkovitch v. Cline 236-196

Where the lessee was locked out by the lessor. Held that the evidence was sufficient to warrant a finding of.

Mitsakos v. Morrill 237-29

A lessee who has been unlawfully evicted may elect to sue the lessor for breach of the covenant of quiet enjoyment or to bring an action of tort for damages.

Mitsakos v. Morrill 237-29

Held that there was no, of a tenant at will of a furnished house because she had the use and actual possession of the premises and mortgaged furniture until she surrendered the premises and delivered the keys to the landlord.

Dowd v. Lawlor 238-310

V Landlord's Liabilities

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Owing to the lack of necessary evidence as to tenancy landlord held not responsible to an alleged tenant for a defect in a common passageway.

Schena v. Bacigalupo . . . 233-126

Landlord held liable for injuries to wife of tenant caused by the falling upon her as she was passing through of a part of the flooring and beams which comprised the ceiling of the cellar. Evidence as to repairs made in the cellar admitted as tending to show who was in control of the cellar.

Crudo v. Milton 233-229

Landlord not liable for injuries to wife of tenant caused by the giving away of the railing around a platform or balcony on the outside of the tenement occupied by the plaintiffs. The making of repairs by a landlord from time to time in response to the request of a tenant does not constitute an admission of responsibility on the part of the landlord. A custom as to owners making necessary repairs etc. not admissible in evidence.

Conahan v. Fisher 233-234
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Not liable for injuries to a child of a tenant caused by his falling through a defective gate into an unused dumb-waiter well, when.

Angevine v. Hewitson . . . 235-126

Not liable to tenant for injuries caused by the bursting of a hot water coil in a hot air furnace. Rule of caveat emptor applied.

Mansell v. Hands 235-253

Where guest of tenant was injured by reason of breaking through a board of the piazza of the house. Obligation of landlord to repair.

Kirby v. Tirrell 236-170

No recovery where the mother was injured by the falling upon her of a marble slab in the cellar of the house occupied by her daughter as a tenant at will.

Wallquist v. Rogers 237-83

Landlord liable for the death of his tenant and injuries received by the tenant's daughter-in-law caused by the falling of a piazza on the premises.

Crowe v. Bixby 237-249

Finding warranted that the landlord had agreed to make repairs on his own responsibility and without reference to notice from the tenant of defective condition.

Crowe v. Bixby 237-249

Where the wife of the tenant of the third floor of a tenement house was injured in falling down a flight of stairs which led from the roof to the third floor. Construction and application of St. 1907 C. 550 § 127 and Spec. St. 1915 C. 352 § 4.

Vallen v. Cullen 238-145

Where a daughter of a tenant was injured by falling from the roof of a piazza on the rented premises. While the piazza roof was a part of the demised premises it was not in-

tended that it was to be kept safe to walk or stand upon, or for the tenant's use. Held that the landlord was not liable.

Eisenhauer v. Ceppi . . . 238-458

VI Landlord's Rights

Action to recover for use and occupation. The plaintiff was not required to demand the payment of rent at the time it became due and payable as a condition to his right to sue for its recovery. Nor was he required to make such demand as a condition to his right to determine the tenancy at will upon the failure, neglect or refusal of the defendant to pay the rent when it fell due.

Dowd v. Lawlor 238-310

VII Lease

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1 GENERALLY

Two railroad corporations held not legally competent under the statute or otherwise to make an agreement to execute a.

Hampden R. R. v. B. & M. R. R.
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Recovery of damages for breach of an oral agreement by the defendant to lease certain premises to the plaintiff.

Diebold Safe & Lock Co. v. Morse
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Where by the provisions of an oral agreement between the lessor and the lessee it was agreed that lessor should take possession of the leased premises for the purpose of erecting a new building thereon, a bill by the lessee to enjoin the defendants the lessors from tearing down the leased premises dismissed because the plaintiff was estopped by his own acts from setting up the Statute of Frauds and that the granting of an injunction would operate inequitable to the defendants.

Peoples Express Inc. v. Quinn
235-156

The bringing of an action by the plaintiff to recover rent due under a, constituted a ratification of its execution although the person who signed the, with the plaintiff's name had no authority to so do.

Gross v. Cohen 236-468

Where an employee of the plaintiff and another defendant were

given a, of the premises occupied by the plaintiff. Held that such employee and the other defendant were not constructive trustees of the, for the plaintiff.

Goldstein v. Burrows. . . . 237-79

Bill by a lessee of a theatre against the assignee of a sublease for specific performance of certain covenants in the sublease as to the repair and replacement of the carpets, fittings, fixtures, furniture etc. in said theatre. Measure of damages. Held that the plaintiff did not prevent performance of the terms of the lease and certainly did not release the defendant from its obligation.

Gulesian v. St. James Amusement Co. 238-172

2 ASSIGNMENT

Liability of assignee of lease for rent. As to an, by the assignee.

Harmon, Wastcoat Dahl Co. v. Star Brewing Co. 232-566

Held that plaintiff could not recover damages for an alleged wrongful eviction because he never received any title under his lease from the trust there never having been any valid, of the original lease to the trust.

Podren v. Macquarrie. . . . 233-127

On facts held that a mortgage made by the assignee of a lease and not covering all the land covered by the original lease did not operate as an, of the entire lease.

Lamson v. Coulson. 234-288

3 CONSTRUCTION

Of a lease where the yearly rental for certain lots of land was a certain percentage of the assessed value of the said lots.

Hippodrome Amusement Co. v. Wit. 233-216

Of a provision in a lease providing that the demised premises shall be heated by the lessors. Effect of conduct of the parties on the question of their interpretation of such a provision.

N. Y. Central R. R. v. Stoneman 233-258, 236-81

Lessee held liable under a covenant in his lease to pay taxes, for additional income taxes paid by his lessor on rent received by him under said lease.

Kimbal v. Cotting. 234-172

Words in lease "To hold for the term ——— years with right of renewal from the ———" held to mean that the renewal lease should be of the same premises contained in the lease.

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Of lease. Action to recover damages for failure to heat premises occupied by the plaintiff as lessee of the defendant.

Kennon v. Shepard. 236-57

Of a lease where unless notice is given by the lessee of his intention to terminate the lease the lease is continued in force for another year.

Carlisle v. Weiscopf. 237-183

Of an agreement in a lease by the terms of which the lessee was to be given an opportunity in the event of the sale of the premises to purchase the same. Held that the provisions of this agreement upon which the rights of the parties depend were plain and free from ambiguity. Held that the lessor independently of and notwithstanding this agreement may sell the reversion.

Levy v. Peabody. 238-164

4 TERMINATION

Construction of an agreement for the surrender of a lease. Held that the agreement was much more than a bar surrender of the lease.

Gardiner v. Higgins. 234-350

Where unless notice is given by the lessee of his intention to terminate the lease the lease is continued in force for another year. The defendant never having elected to terminate the tenancy and having paid the rent as it fell due, the plaintiff's notice to vacate and deliver up the premises is without any legal effect.

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VIII Notice to Quit

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Abatement of, where there is a continuing breach by the lessor of covenant to restore the premises to their former condition. Abatement of, in the first action precludes

the claiming of an abatement of, in any subsequent action.
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An assignment under seal by the owner of, due under a lease whose term is for less than seven years is good after notice to the lessee against a subsequent purchaser of the premises without notice of the assignment and before notice was given to the lessee. An assignment of, is governed by the rule of caveat emptor.

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Liability of assignee of lease for. As to an assignment by the assignee.
Harmon, Westcoat Dahl Co. v. Star Brewing Co......232-566

Action on an account annexed for, of a store. Admissibility of evidence as to the payment of, by a former occupant of the store, and of eviction and surrender of the lease. Letter written by a former lessor after the sale of the property, not competent. Right of present lessee to maintain an action on the old lease against the lessee therein named for the, that had accrued after the lease and assignment to him for the benefit of the lessor under the old lease.

Reidy v. Kennedy233-514

A breach by the lessor of an oral agreement modifying a written lease and made subsequent thereto is a valid defence in an action by the lessor against the lessee for.

Conroy v. Toomay.... 234-384

Where mortgagee foreclosed leased land held that the tenants cannot avoid paying, to the assignee of their original landlord unless and until the mortgagee in possession notifies them to pay, to him, or threatens to evict them or they had agreed to attorn to him in recognition of his paramount title.

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I Questions for Court

Where the facts are not in dispute the question whether a contract is against public policy is a, under all the circumstances of the particular case.

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238-43

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On facts finding warranted that remarriage became valid and the issue thereof legitimate.

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A charge of keeping a place resorted to for, is sustained where it is shown that indecent and unnatural acts were committed by men with others of their sex. Includes illicit sexual intercourse and the irregular indulgence of lust whether public or private. Acquittal of a charge of being a lewd person is not a defence to an indictment charging such person with keeping a disorderly house. Admissibility of certain evidence as to the defendant's reputation and silence.

Com. v. Porter.....237-1

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LEWD PERSON

The crime of being a, in speech and behavior of which crime the defendant was acquitted is a distinct offence and different in kind from the keeping of a house or building for an illegal purpose.

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- 3 CONSTRUCTION
- 4 DAMAGES
- 5 EVIDENCE
- 6 PARTIES
- 7 PLEADINGS
- 8 PRIVILEGED COMMUNICATIONS

II Criminally**I Civilly****1 LIBEL**

Held that a corporation without capital stock organized under R. L. C. 125 § 1, 2, may maintain an action of tort for, against two publishing houses as joint tortfeasors.

Finish Temperance Soc. v. Socialistic Pub. Co. 238-345

2 SLANDER

A corporation is liable for slanderous words spoken by one of its employees in the course of his employment.

Mills v. W. T. Grant Co. . . 233-140

Finding for the plaintiff warranted where the meaning of the slanderous word used by the defendant was understood by those present although expressed in a foreign language.

Bellingheri v. Aliosi 235-146

An action will lie for a slanderous charge of a crime made in the presence of a police officer.

Zinkfein v. W. T. Grant Co. 236-228

Where a former employee of the defendants who are husband and wife the wife being the proprietor of a store and her husband being employed there in as assistant manager alleges that the defendant husband accused her of theft at the time of her discharge. If the witness understood the words spoken it is sufficient even if they were spoken in a foreign language. Liability of wife for slanderous words uttered by husband while in her employ as her servant and agent.

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3 CONSTRUCTION

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4 DAMAGES

The plaintiff is entitled to recover as an element of, for mental suffering

caused by the publication of the slander.

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Where there are two actions for slander one against a wife the other against her husband they may both be found liable but there can be but one satisfaction in.

Pion v. Caron 237-107

5 EVIDENCE

In an action for slander it is not necessary to show that the exact words charged were spoken but that the words spoken were substantially as alleged.

Pion v. Caron 237-107

6 PARTIES

Actions for slander where the defendants are husband and wife.

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7 PLEADINGS

(No case found)

8 PRIVILEGED COMMUNICATIONS

(No case found)

II Criminally

(No case found)

LICENSE

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St. 1916 C. 293 § 1 as to licensing by city and towns of motor vehicles to operate for hire is constitutional. Burgess v. Mayor etc. of Brockton 235-95

Validity of city ordinance concerning the licensing and operation of motor vehicles for hire. Granting and revocation of a, granted under such ordinance. Municipality under no obligation to grant such a.

Burgess v. Mayor etc. of Brockton 235-95

LIEN

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III Forfeiture**IV Material-Men's****V Mechanics**

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- 2 CERTIFICATE
- 3 ENTIRE CONTRACTS
- 4 OWNER'S CONSENT
- 5 PRACTICE
- 6 SERVICES
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I In General

Bill in equity to recover the amount due to the plaintiff by the defendant for teams and drivers furnished the defendant for the performance of a contract between the defendant and a city. Held that plaintiff was not entitled to the benefit of any part the money retained by the city under the contract.

Loonie v. Wilson.....233-420

II Enforcement

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III Forfeiture

(No case found)

IV Material-Men's

(No case found)

V Mechanics**1 GENERALLY**

A, may be established on the interest of one tenant in common of real estate although the petition to establish the, was brought against both tenants in common.

Roxbury Painting & Decorating Co. v. Nute.....233-112

Held that plaintiff could not establish his, because the agreement between him and the defendant was not such a written contract as is required by the, statute.

Varnum v. Kogios.....233-264

Bills to enforce, liens dismissed because the notice given as to the when the contract was to be completed was not sufficient under the statute.

Pratt & Forrest Co. v. Strand Realty Co.....233-314

Bill to enforce a, under St. 1915 C. 292 § 3 dismissed.

Savoie Quarry & Cons. Co. v. Ziman.....234-210

Petition to enforce a, under R. L. C. 197. The petitioner commenced work in performance of an oral contract for furnishing labor and materials in the construction of a building on April 29th, 1915 before the enactment of St. 1915 C. 292 and completed the contract on January 31, 1916 after that act went into operation. Held that the petitioner was entitled to maintain his petition notwithstanding the repealing provisions of St. 1915 C. 292 § 13.

Manchester v. Popkin....237-434

A, under R. L. C. 197 for labor and materials is an interest in the property stands as security for the payment of the debt, is a vested right and is not an additional and extraordinary remedy which the legislature may discontinue at pleasure.

Manchester v. Popkin....237-434

2 CERTIFICATE

(No case found)

3 ENTIRE CONTRACT

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4 OWNER'S CONSENT

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5 PRACTICE

A, can be enforced only by a strict compliance with the statute. Savoie Quarry & Cons. Co. v. Ziman.....234-210

St. 1915 C. 292 relating to, is not retroactive.

Savoie Quarry & Cons. Co. v. Ziman.....234-210

A bill to enforce a, under St. 1915 C. 262 which cannot be maintained under that statute cannot be amended into a petition under R. L. C. 197 when the requirements of that chapter as to the filing of statement of claim and the bringing of a petition to enforce the lien have not been complied with.

Savoie Quarry & Cons. Co. v. Ziman.....234-210

6 SERVICES

A, cannot be enforced by a subcontractor under St. 1915 C. 292 § 3 for, not furnished by him personally in the construction of a building unless the requirements of

§ 2 of the statute are complied with. No relief can be given under St. 1915 C. 292 § 1, to an employer for a debt owed to him for labor performed by his employees and not by him personally.

Savoie Quarry & Cons. Co. v. Ziman.....234-210

7 SUBWORKMEN

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LIQUORS

See Intoxicating Liquors

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Plea by defendant of, in an action of replevin overruled.

Orieg v. Turner.....232-174

Held that the mortgagees who were the plaintiff's counsel had actual notice of the pendency of the proceedings although no notice of, had been filed.

Steele v. Estabrook.....236-252

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A prize contest conducted by a storekeeper is not a.

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The treasurer and collector of taxes of, was not required to put the money of the city at interest and having accounted for all moneys received which included accumulations of interest he has fully discharged every requirement of his office.

Lowell v. Stiles.....232-341

Members of the municipal council of, held personally liable for the unjustifiable and unauthorized removal by them of a city officer. St. 1911 C. 645 § 40 relating to the removal by the municipal council of, of certain city officers does not delegate judicial power to the council.

Stiles v. Municipal Council of Lowell.....233-174

As to the legality of a vote by the city council of, appropriating on the ground of "urgent necessity", a certain further sum of money in settlement of damages for the taking by the city of, of certain land by right of eminent domain.

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MISCHIEF**

(No case found)

**MALICIOUS
PROSECUTION**

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In an action for, plaintiff's request for a ruling that if the criminal proceedings were instituted by the defendant as a means of securing the return of the property it is conclusive evidence of malice rightly refused.
Kelsea v. Swett.....234-79

A request that on all the evidence a verdict should be ordered for the plaintiff could not properly have been given because there were questions of fact for the jury.

Kelsea v. Swett.....234-79

Action against a proprietor of a hotel and restaurant alleging, of the plaintiff on a charge of drunkenness. Arrest of and making a complaint for drunkenness against the plaintiff by an officer.

Mason v. Jacot.....235-521

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MANDAMUS

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- 1 WHEN LIES
- 2 WHEN DOES NOT LIE

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- 1 WHEN LIES

To compel the reinstatement of the petitioner as a plumber in a city water department.

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To reinstate a school teacher illegally removed by a school committee.
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The writ of, is not directed to an office but to the person holding the office.

Knights v. Treas. & Receiver Gen'l
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To compel recognition as members of the Boston Firemen's Relief Fund of employees in the repair and construction division, veterinary service, and fire alarm branch of the fire department.

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- 2 WHEN DOES NOT LIE

To command a judge of the Probate Court to disregard or to dismiss a claim of appeal.

Taylor v. Thompson.....232-269

To compel the public service commissioners to file an award determining the rent to be paid for use of the Union Station in Worcester.

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To compel the appropriate public officers of the city of Boston to grant and approve permits to the petitioners to convey garbage through the streets of Boston.

Wheeler v. Boston.....233-275

To compel the Secretary of State to provide the petitioners with

blanks for use in referendum proceedings.

Sullivan v. Secretary of the Com.
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To direct the commissioners of the department of public utilities to approve an agreement relating to the sale of gas to the petitioner by a certain corporation and particularly the price to be paid therefor.

Boston Consol. Gas Co. v. Dept.
Public Utilities.....235-590

To prevent the distribution of the income tax by the Treasurer and Receiver General among the several cities and towns.

Knights v. Treasurer & Receiver
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To prevent the selectmen of a town from inserting in the warrant for the annual town meeting an article providing for a vote upon the question "Shall licenses be granted for the sale of certain non-intoxicating beverages in this town" and to issue the warrant without inserting such an article therein.

Jones v. Selectmen of Weston
238-218

II Procedure

Against one who has ceased to hold public office abatement of petition therefor and right to amend petition by substituting the name of the present holder of the office.

Knights v. Treas. & Receiver Gen'l
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MANURE

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MARRIAGE

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Finding warranted that the woman did not go into another state to be married in violation of R. L. C. 151 § 10 and that she entered upon the second in "good faith" and that the, became valid and the issue thereof legitimate.

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- (a) *Appliances*
- (b) *Fellow Servants*
- (c) *Risks of Employment*

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Where plaintiff's intestate was drowned while employed as mate of the defendant's steam trawler. Employer's liability.

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Action under the Federal Act for personal injuries received when helping to unload an automobile from a freight car commonly used for transporting coal. Assumption of risk by the plaintiff. Negligence of the foreman.

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Action under the Federal Act for personal injuries by a flagman who while in the performance of his duty of protecting the train was injured by reason of its backing down upon him. Custom as to signal to be given before moving train backward. Assumption of risk by plaintiff and negligence of defendant for jury.

Howard v. N. Y. N. H. & H. R. R. 236-370

Action under the Federal Act where plaintiff a drawbridge tender was injured while instructing another employee in relation to the operation of

the drawbridge. Held that the plaintiff when injured was engaged in interstate commerce.

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McAller v. Gillett. 233-95

Employer held not liable where employee about eighteen years of age was injured by being struck on the head by an ascending dumb-waiter. The provisions of R. L. C. 104 § 127 relating to the construction of elevator cars and safety appliances used in connection therewith do not apply to this case.

Cullity v. Johnson. 235-137

Liability of employer where employee was injured when in the act of alighting from an elevator in the store of the employer.

White v. E. T. Slattery Co. 236-28

Defendant held not liable for injuries received by the plaintiff while temporarily in his employ by the explosion of a soda tank. Age of the apparatus. Repair and renewal of the apparatus. The doctrine of *res ipsa loquitur* does not apply.

Russell v. Spaulding. 238-206

Where plaintiff was injured by a pin while she was washing dishes in the course of her employment in the defendant's bakery. Held that the cause of its presence was conjectural; and on the facts disclosed there was no duty of inspection. Judgment ordered for the defendants.

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(b) *Fellow Servants*

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(c) *Risks of Employment*

Question of assumption of risk of plaintiff for jury.

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Sandon v. Kendall. 233-292

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Assumption of risk of injury by an employee who was injured when helping to unload an automobile from a freight car.

Leary v. N. Y. Central R. R. 235-432

Where the plaintiff an employee of an independent contractor was injured by an explosion in the defendant's gasoline pump house while the plaintiff at the request of the defendant was installing a new pump. Assumption of risk of injury by plaintiff. Duty of the defendant to warn the plaintiff of obscure and concealed dangers.

Carpenter v. Sinclair Refining Co. 237-230

Where plaintiff a laundress in the employ of the defendant was injured by a nail protruding from the back of a wash-board. Findings warranted that the plaintiff did not assume the risk of the condition of the board, that the plaintiff was in the exercise of due care and that the defendant was negligent.

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2 TO STRANGERS

Where plaintiff's intestate who was passing by was invited to help some employees of a contractor, who were working under the direction of an employee of the defendant, move a railroad car and while so doing was struck and killed by a falling "gin pole." Plaintiff's intestate not a mere volunteer or licensee. Authority of defendant's employee and contractor's employee.

Sandon v. Kendall. 233-292

Defendant held not liable for injuries to a traveller on the street from being hit by an iron washer thrown through a window of the defendant's building by one of its employees.

Douglas v. Holyoke Machine Co.
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Bill to set aside a mortgage and a mortgage note on the ground that the maker had not sufficient mental capacity to execute them.

Sutcliffe v. Heatley. 232-231

The compromise and settlement of a pending action at law although the debt on which the action was brought was barred by the statute of limitations, is a good consideration for a note and mortgage.

Clark v. Jones. 233-591

On facts held that a, made by the assignee of a lease and not covering all the land covered by the original lease did not operate as an assignment of the entire lease.

Lamson v. Coulson. 234-288

Where during the pendency of partnership proceedings the plaintiff gave a mortgage of his interest in certain real estate belonging to the partnership to his counsel as security for their services it was held

that the mortgagees had actual notice of the pendency of the proceedings although no notice of lis pendens had been filed that the mortgage was not valid against the defendants that the mortgagees be ordered to discharge the mortgage and that all money payable to the plaintiff should be paid to him and not to his counsel the said mortgagees.

Steele v. Estabrook 236-252

Held that a certain agreement in a mortgage made in statutory form as to the entire mortgage debt becoming due at the option of the holder in case any default in a "condition" of the mortgage should exist more than thirty days was intended to be included by the parties within the scope of the "statutory condition" and power.

American House Hotel Co. v. Hemenway 237-180

Held that a certain deed of the plaintiff to the defendants and an agreement for repurchase by the plaintiff constituted an equitable mortgage.

Southwick v. Bigelow 237-299

II Absolute Deeds

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An, of a conditional sale agreement of personal property as security for the payment of a debt constitutes a mortgage and is not valid against a subsequent purchaser unless it is recorded.

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Foreclosure of a, because of a breach of condition thereof i.e. failure of the mortgagor to procure fire insurance on the mortgaged property.

Lawlor v. Dowd 237-569

A note and a, given by the deceased to his mother for the purpose and with the intention of prevent-

ing his wife from reaching his property in any proceeding brought by her against him to secure her marital rights to support and maintenance is void as against her.

Doane v. Doane 238-106

Where three, were given by the plaintiffs to the defendant. The defendant in the first mortgage agree in writing to advance a sum of money not included in the mortgage for the purchase of additional cows, in the second mortgage for a smaller amount he agreed in writing to advance later a sum of money included in the mortgage for the purchase of additional cows. The first and second, were discharged and a third mortgage was given to be paid in monthly instalments and giving the plaintiffs the right to retain use and enjoy the mortgaged property until default. The questions of accounting between the parties as to the amount of the third mortgage and whether the plaintiffs had relinquished any of their rights by giving the third mortgage were for the jury. Foreclosure and sale by the defendant without default on part of the plaintiffs.

Held that the plaintiffs could maintain an action in tort to recover for the wrong done.

Glassman v. Ficksman . . . 238-580

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Construction of a clause in a deed whereby the grantee assumed and agreed to pay certain, and to hold the grantor harmless thereon.

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Bill in equity by the trustees in bankruptcy of a corporation to compel the cancellation of certain construction mortgages held by the defendant upon real estate of the bankrupt corporation.

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Bill by mortgagors to set aside a, of a mortgage. Evidence is not admissible to show certain oral agreements by the mortgagee that the mortgagors should have as long

Bill to set aside the, of a mortgage which had been assigned by the mortgagee to the defendant did not use good faith in the conduct of the, proceedings although there was a literal compliance with the terms of the mortgage in the proceedings.

Clapp v. Gardner 237-187

Of a mortgage of personal property because of a breach of condition thereof i. e. failure of the mortgagor to procure fire insurance on the mortgaged property.

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Foreclosure of a chattel mortgage because of a breach of condition thereof, i. e. failure of the mortgagor to procure fire, on the mortgaged property.

Lawlor v. Dowd 237-569

X Mortgagee's Rights and Liabilities

Right of mortgagee to maintain a suit in equity against the mortgagor to compel him to correct a mutual mistake as to the land intended to be conveyed.

Hillside Co-operative Bank v. Cavanaugh. 232-157

On facts held that an action of conversion was maintainable by a mortgagee of personal property against a deputy sheriff.

Entin v. Evans. 235-43

XI Mortgagor's Rights and Liabilities

A mortgagor cannot maintain a bill in equity to enjoin the foreclosure of the mortgage merely because of a gratuitous promise on the part of the mortgagee to discharge the debt secured by the note and mortgage.

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XII Power of Sale

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Mortgagor's right of, lost because of his failure to redeem the land within the time allowed him by the court. The mortgagor by bringing, proceedings waived his right to have the land sold under the power of sale in the mortgage.

Dennett v. Atkins. 232-301

In, proceedings by a second mortgagee held that the plaintiff must pay to the first mortgagee the amount of a bonus agreed upon by the first mortgagor in addition to the amount due the first mortgagee for money advanced to him.

Kempton v. Boyle. 233-579

Held that the plaintiff by the foreclosure of a later mortgage was cut off from all right of, from prior mortgages.

Mitchell v. Wright. 234-458

Bill to redeem from a mortgage. On appeal final decree dismissing the bill affirmed the plaintiff having failed to substantiate any of the material allegations set forth in the bill.

McCarthy v. Waltham Co-operative Bk. 234-512

A wife may maintain a bill in equity to redeem real estate of her husband from a mortgage made by him in which she joined to release her rights of dower homestead and all other rights.

Ryder v. Brockton Sav. Bk. 235-476, 238-52

Where an attaching creditor without tendering the amount due upon the mortgage permits the mortgagee to sell the property under the terms of his mortgage his right of, is lost although he attended the sale and bid on the property and the mortgagee became the purchaser.

Ryder v. Brockton Sav. Bk. 235-476, 238-52

Of property from a second mortgage. Held that the plaintiff had elected to waive damages and relied on. Held that the plaintiff was not entitled both to, from the second mortgage she cannot because of the foreclosure of the first mortgage abandon her remedy by, and have relief by damages.

O'Brien v. Logan. 236-507

After foreclosure and sale. Held that the plaintiffs had no right to

redeem after the foreclosure sale. Promise to reconvey on payment of the amount of the mortgage and expenses.

Matthews v. Dinner . . . 237-153

Bill to redeem from an equitable mortgage. An agreement to waive the right in equity to redeem the mortgage made at the time the equitable mortgage was executed is void as against public policy.

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City to assume the costs and expenses of alterations of bridge at railroad crossing.

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232-171

Computation of proportionate amount to be paid to any department of any city except Boston from the proceeds of the tax on incomes returned by the Commonwealth. Words "total local tax levy" defined. School Committee of Cambridge v. Mayor etc.233-6

Towns and cities have no inherent power to levy taxes but can exercise only those powers to tax which are delegated to them by the Commonwealth.

Duffy v. Treas. & Receiver Gen'l
234-42

Dane v. Treas. & Receiver Gen'l.
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As to the distribution among and the disbursement by the several cities towns and taxing districts of the income tax. Basis of distribution. Can be disbursed by them only for public use.

Duffy v. Treas. & Receiver Gen'l
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236-280, 237-50

As to the apportionment of the expense of rebuilding a bridge over a railroad between the railroad and the town.

Selectmen of Brookline Petitioners
236-260

The town is not entitled to interest on the amount expended by it in rebuilding the bridge and thereafter apportioned upon the railroad.

Selectmen of Brookline Petitioners236-260

As to the power of the Legislature to constitute a city government in a town. The town must first make an application to the Legislature by a vote of its inhabitants and if an act of incorporation is passed pursuant to the application such act must be submitted for acceptance to the inhabitants. Held the Special Statute 1917 C. 289 incorporating the city of Methuen was unconstitutional.

Att'y Gen'l v. Methuen. 236-564

Bill to enjoin a town and its superintendent of streets from damaging the plaintiff's premises by blasting in a nearby quarry.

Stevens v. Dedham238-487

Held that a, is not liable for property stolen during a riot.

Yalenezian v. Boston . . . 238-538

II Division

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III Equity Jurisdiction

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IV Liability

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1 WHEN LIABLE IN CONTRACT

The requirements of the revised charter of a city that every contract over \$5000 made by any department of the city shall be accompanied by a bond with sureties or by a deposit of money is mandatory and applies to all contracts so made. If such a contract is made without such bond or deposit it is void.

Bay State St. Ry. v. Woburn
232-201

Action by an architect against a town to recover for services due him under a contract made with a building committee of the town for the erection of a town hall.

Vinal v. Nahant. 232-412

Article in warrant for a town meeting and vote thereunder did not constitute a contract between the town and an architect for the erection of a town hall.

Vinal v. Nahant. 232-412

Action by a police officer to recover for services alleged to have been performed by him after his alleged unlawful discharge by the defendant city.

Ladd v. Newburyport. . . . 232-570

Action by an architect to recover for services in preparing plans and specifications for a school house at the request of the school committee.

Simpson v. Marlborough 236-210

2 WHEN LIABLE IN TORT

A letter sent to one of the selectmen of a town held to be a sufficient notice under the provisions of St. 1912 C. 221 as to notice of the time place and cause of the injury.

Maloney v. Cohasset. . . . 234-284

Liability of a town for damages where the town officials fail to order the tree warden to cause the removal

of a limb of a tree which protrudes over the travelled part of highway and endangers persons travelling thereupon.

Valvoline Oil Co. v. Winthrop
235-515

An action for damages cannot be maintained against a town for malicious prosecution, nor for abuse of legal process, nor for conspiracy even when such actions or either of them was authorized or ratified by the town for the purpose of forcing the plaintiffs to leave the town where they had an established business.

Brown v. Edgartown. . . 236-258

On facts bill to enjoin the defendant city from draining water from a public highway across land of one H. and of the plaintiff dismissed.

Blair v. Brockton. 236-512

A person injured by an ambulance maintained and operated by the selectmen of a town in pursuance of a void vote of the town to carry its inhabitants without charge whenever the occasion required to hospitals outside the town cannot maintain an action against the town to recover for such injuries.

Ducey v. Webster. 237-497

V Money Powers

Legality of an appropriation by a city council on the ground of "urgent necessity."

Merrill v. Lowell. 236-463

There is no power given by statute or by implication to of the sick and injured who may require hospital treatment.

Ducey v. Webster. 237-497

A vote by a town at a special meeting authorizing the purchase of a chemical engine in violation of a by-law of the town regulating grants of money in excess of a certain amount held to be illegal.

Loring v. Westwood. 238-9

VI Officers

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One making contract with the, a of a city is chargeable with knowledge of the contractual powers of the city.

Bay State St. Ry. v. Woburn
232-201

Held that the order assessing the betterment was subject to the veto of the mayor and that the order was invalid because it did not become effective within two years after the order of layout.

Jewett v. Mayor of Medford
233-65

Rights, powers and duties of a board of survey under St. 1907 C. 191. As to the erection by the board without permission of signs upon privately owned unimproved land or within a highway the fee to which is owned by a private person, giving a description of the roads which under the Statute would be acceptable to the board.

Lexington v. Surburban Land Co.
235-108

Duty of town, to order the tree-wardens to trim a tree which endangers persons travelling on a highway of the town.

Valvoline Oil Co. v. Winthrop
235-515

A bill cannot be maintained to reach and apply in payment of a debt due the plaintiff from the defendant certain salary due the defendant as a municipal. Such salary might have been attached by trustee process.

Hooker v. McLennan 236-117

School committee of city held to have no authority to hire an architect to prepare plans and specifications for a school house. Authority of, of a, to bind the, by contract.

Simpson v. Marlborough . . 236-210

Persons having business relations with cities and towns are bound to take notice of the scope of the authority of those professing to act as agents.

Simpson v. Marlborough . . 236-210

Mandamus directing the selectmen of a town not to insert in the warrant for the annual town meeting an article providing for a vote upon the question "Shall licenses be granted for the sale of certain non-intoxicating beverages in this town" and to issue the warrant without inserting such an article therein, denied.

Jones v. Selectmen of Weston
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Bill to enjoin a town and its superintendent of streets from damaging the plaintiff's premises by blast-

ing in a nearby quarry. Liability of the superintendent.

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The town system of government recognized and preserved by the Constitution is not transcended by the provisions of St. 1919 C 314 which provides for the distribution of the income tax among the several cities, towns and taxing districts.

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Petition for contempt dismissed as there was no violation by the defendant of a injunction restraining him from using a certain, in connection with his business except in a certain way.

Kelly v. Morrison 234-382

On facts plaintiff denied an injunction to prevent the defendant from using certain names used by the plaintiff in his business as a private detective.

Burns v. Wm. J. Burns Int. Detective Agency 235-553

Initials alone do not constitute a. Description or abbreviation is not the equivalent of a. The distinctive characterization in words by which one is known and distinguished from others is the, of a person.

W. B. Manuf. Co. v. Rubenstein 236-215

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Owner of house held not liable for injuries to a laundress employed by her and caused by the defective condition of a part of a stairway in the house leading from the kitchen to the laundry.

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A public charitable corporation maintaining a hospital is not liable for injuries received through the, of its servants or agents.

Roosen v. Peter Brent Brigham Hospital.....235-66

Action for personal injuries caused by the falling of an iron fence while it was being taken down and removed. Evidence is admissible to show that the fall of the fence was caused not by the, of the defendant but by the acts of other persons who climbed on or interfered with the fence and caused it to fall.

Del Visco v. General Electric Co. 235-415

Liability of defendant for personal injuries received by the plaintiff while in the defendant's place of amusement. Assumption of risk by plaintiff.

Sullivan v. Ridgway Construction Co.....236-75

Defendant held not liable where the plaintiff a child about four years of age was injured by the fall of a wall maintained by the defendant on his premises and separating the premises from a public way. Duty of the defendant to persons upon the way.

Blanchard v. Reynolds... 236-596

The difference between negligence whether ordinary or gross and conduct which is wilful, wanton, in reckless disregard of the rights of others, is a difference in kind and not

merely one of degree. In the first case the wrongdoer is guilty of nothing worse than carelessness. In the last he is guilty of a wilful, intentional wrong. His conduct is criminal or quasi criminal. If it results in the death of the injured person, he is guilty of manslaughter.

Cotter Pet'r..... 237-68

Prondecka v. Turners Falls Power & Elec. Co..... 238-239

Where the defendant's driver left his horse after tying the horse to a post in an alley facing a busy street. Soon afterwards the horse broke the fastening and ran out into the street the wagon struck a post near the corner of the alley and a box fell from the wagon which struck and injured the plaintiff. Held that there was no, on the part of the defendant.

Maguire v. Amer. Railway Express Co.....237-226

Where it was alleged that the plaintiff's testator a policeman was killed by a fall down a trap door hole in a vacant store owned by the defendant which it was alleged he had entered in performance of his duty. Held that the evidence did not warrant a verdict for the plaintiff.

Brennan v. Keene.....237-556

Where the plaintiff while traveling upon the sidewalk of a city street was struck and severely injured by a heavy sign which fell from the front of a five-story building owned by the defendant. Judgment for the plaintiff.

Woodman v. Shepard.. 238-196

Where plaintiff's intestates were drowned while fishing in the Connecticut River below the dam of the defendant by the rising water caused by the opening of the gates in the dam. Ordering of verdict for the defendant on the second count charging "negligence" of the defendant in causing the death of the intestate. Exceptions to the refusal of the judge to order a verdict for the defendant on the charge of "wanton and reckless misconduct" of the defendant sustained. St. 1907 C. 375 (now G. L. C. 229 §5) creates no right of action for death caused by wanton and reckless misconduct.

Prondecka v. Turner Falls Power & Elec. Co. 238-239

Where a boy six years old while playing on a vacant lot adjoining the

premises of the defendant was severely injured by the dumping of hot ashes by an employee of the defendant in the course of his employment upon the child's bare feet and legs and as a result he died. The deceased having been a trespasser, the plaintiff in order to maintain this action had to prove reckless, wanton or wilful conduct on the part of the defendant's employee. Held that there could be no recovery on the count for causing the death of the intestate.

Adamowicz v. Newburyport Gas & Elec. Co. 238-244

G. L. C. 229 § 3 which requires that an action for, causing death shall be "begun within one year after the injury which caused the death" is a limitation upon the exercise of the right itself and not upon the exercise of an existing right.

Crosby v. Boston Elev. Ry. 238-564

Action to recover damages for injuries received by the plaintiff by falling through an opening of a stairway leading from the kitchen of her tenement. Held that the jury could find that the defendant was grossly negligent.

Harvey v. Crane. 238-571

II Contributory Negligence or Due Care

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1 CONTRIBUTORY NEGLIGENCE

Of one of the members of the crew of a fishing schooner.

Cambra v. Santos. 233-131

Of a person passing by who was invited to help some employees of a contractor move a railroad car.

Sandon v. Kendall. 233-292

Held in an action for personal injuries that the plaintiff's intestate did not assume the risk.

Bergeron v. Forest. 233-392

In an action for personal injuries held that instructions that the plaintiff was in the exercise of due care and that the defendant was negligent were rightly denied.

Morrissey v. Conn. Valley St. Ry. 233-554

St. 1914 C. 553 the "due care" statute is applicable in an action brought in this state for personal

injuries although the accident occurred in another state.

Levy v. Steiger. 233-600

Of plaintiff and defendant where plaintiff's wagon while upon the track of a street railway in the evening was run into from behind by one of the defendant's cars.

Herman v. Middlesex & Boston St. Ry. 235-179

None of plaintiff where there was a collision between the plaintiff's wagon and an electric street car.

Connolly v. Boston Elev. Ry. 236-173

Contributory negligence of the plaintiff and due care of both motormen where the plaintiff was thrown off one street car and run over by another street car immediately following.

Bilodeau v. Fitchburg & Leominster St. Ry. 236-526

Where the plaintiff an employee of an independent contractor was injured by an explosion in the defendant's gasoline pump house while the plaintiff at the request of the defendant was installing a new pump. Held that there was no, on the part of the plaintiff. Failure of defendant to warn plaintiff of the dangers incident to his work.

Carpenter v. Sinclair Refining Co. 237-230

Where the plaintiff was run into and injured by a street car of the defendant while crossing a street. Held that the due care of the plaintiff and negligence of the motorman were for the jury.

Scherer v. Boston Elev. Ry. Co. 238-367

2 DUE CARE

Of the plaintiff and the defendants where plaintiff was injured by falling on an inclined runway in the defendant's store.

Blease v. Webber. 232-165

Liability of trustees of building association for injuries to a prospective tenant from a fall caused by the defective condition of a staircase which she was descending in one of the houses of the defendants.

Of plaintiff and negligence of defendants.

Sleeper v. Park. 232-292

Negligence of motorman and, of boy between six and seven years of age who was struck and run over by a street railway car.

Prendergast v. Boston Elev. Ry. 232-409

Of the driver for the jury where two school children were run into and injured by a horse driven by an officer of the defendant corporation.

Condelli v. Amer. Stables Co. 235-141

Of a woman who was run into and injured by an electric street car as she was crossing a street for the jury.

Healy v. Boston Elev. Ry. 235-150
Scherer v. Boston Elev. Ry. Co. 238-367

Of a boy three years and nine months of age who while unattended on a public highway was run into and injured by an automobile. Negligence of parents in leaving boy unattended on the highway.

Sullivan v. Chadwick... 236-130

Defendants not liable where boy a trespasser was killed by an electric shock from a highly charged transformer wire owned by one defendant and located on land of the other defendant. Duty of defendant's to plaintiff either as a licensee or as a trespasser. Evidence as to, of the plaintiff.

Robbins v. Athol Gas & Electric Co. 236-387

Action to recover damages because of the failure of the defendant's employees to exercise, in the examination of the title to certain real estate for the plaintiff. Held that a finding was well warranted that the defendant acted not merely as insurer but as the plaintiff's paid agent in examining the title. Held that the defendant was liable to the plaintiff for the injury caused by this negligence of its authorized representatives.

Dorr v. Mass. Title Ins. Co. 238-490

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2 COLLISION OF VEHICLES

Injuries to boy while riding a bicycle from, with an automobile.
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Between an automobile and a street car.

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Cowles v. Springfield Gas Light Co. 234-421

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Morel v. N. Y. H. N. & H. R. R. 238-392

Between a motor car and an iron horse placed across a part of a State highway.

Lemon v. Com. 236-599

Between an automobile and a wagon.

Lewandowski v. Cohen . . . 237-125

At a grade crossing in New Hampshire between a wagon in which the plaintiff was riding as a guest of the owner and driver and a passenger train of the defendant.

Gannett v. B. & M. R. R. 238-125

3 GAS

Where the plaintiff's intestate was killed when a manhole of the defendant electric company was blown off at the corner of a street by reason of an explosion of, escaping from a leak in a, main of the defendant, company at a nearby street corner. Negligence of the, company in allowing the, to escape. Negligence of the electric company in the installation and maintenance of a large and heavy electric conduit in such a manner that it rested directly upon the, pipes. Liability of each defendant. Liability of defendants as joint tort-feasors.

Nugent v. Boston Consolidated Gas Co. 238-221

4 RAILROADS

(a) Generally

Action for personal injuries received when a hired automobile ran into a post at the side of a highway to avoid a collision with the railroad train on a grade crossing.

Griffin v. Hustis. 234-95

On facts held that railroad was not liable for the death of the plaintiff's intestate who was killed on a private farm crossing. The plaintiff's intestate when injured had only the rights of a licensee.

Berube v. N. Y., N. H. & H. R. R. 234-415

Liable for injuries sustained by the plaintiff while receiving newspapers and magazines from the baggage master at the door of the baggage car of the defendant at one of its stations.

Belyea v. N. Y. N. H. & H. R. R. 235-225

Collision between an automobile and a railroad engine. Whether neglect of the railroad to give the statutory signal or the plaintiff's own neglect contributed to the accident was to the jury.

Lydon v. N. Y. N. H. & H. R. R. 235-469

Negligence of contractor on account of work in the abolition of a grade crossing.

B. & M. R. R. v. T. Stuart & Son Co. 236-98

Liability of, where a flagman while in the performance of his duty of protecting the train was injured by reason of its backing down upon him.

Howard v. N. Y. N. H. & H. R. R. 236-370

A federal receiver of a railroad corporation is made liable under the statutes of this Commonwealth to actions in tort under St. 1906 C. 463 Part II § 245 for personal injury or loss of life arising from failure to give the signals required by § 147 to the same extent as the corporation owner would be liable if operating the railroad itself.

Sullivan v. Hustis. 237-441

Action for personal injuries received in a collision at a grade crossing in New Hampshire between a wagon in which the plaintiff was riding as a guest of the owner and driver and a passenger train of the defendant. Failure of the defendant to provide a crossing tender at the station, gates, flagman, electric bells or other warning signals or guards at the crossing as evidence of negligence. As to the headlights and braking facilities on its train and lights in the station. Held that there was no evidence of negligence of either the engineer or fireman. Held that the rights of the parties were determined by the laws of the State of New Hampshire.

Gannett v. B. & M. R. R. 238-125

Collision between an automobile truck and a railroad engine at a grade crossing, both of the plaintiffs being employees of the owner of the truck one of them being employed as chauffeur. Proof of failure by the defendant to give the statutory signals. Gross and wilful negligence of the chauffeur, as to negligence of the chauffeur imputed to the other plaintiff.

Morel v. N. Y. N. H. & H. R. R. 238-392

(b) Passenger

Liability of a railroad for damages to a harp belonging to the plaintiff belonging to the plaintiff which she had checked as baggage on a train of the defendant on which she was a.

The plaintiff held to be bound by her valuation and by her agreement limiting the liability of the defendant.

Perkins v. N. Y. N. H. & H. R. R.
232-336

Held not liable where a, was injured by a cinder or some foreign substance getting into his eye. It is common knowledge that under present conditions coal burning locomotives cannot draw a train without emitting cinders and smoke. It is not negligence on the part of the defendant not to keep windows and doors of, cars closed in warm weather in order to exclude cinders. The doctrine of *res ipsa loquitur* does not apply.

Shine v. N. Y. N. H. & H. R. R.
236-419

Held that the plaintiff was a, although he stood inside of the rear vestibule of a street car with one hand on the controller.

Bilodeau v. Fitchburg & Leominster St. Ry. 236-526

The plaintiff is not precluded from recovery even though her intestate a, was not in the exercise of due care. The plaintiff must establish negligence on the part of the defendant its servants or agents.

Cotter Petitioner. 237-68

Railroad held liable for injuries caused by the plaintiff a, being run into by a baggage truck of the defendant as she alighted on the station platform.

Aldrich v. B. & M. R. R. . . 238-29

(c) *Street Railway*

In an action to recover for injuries caused by the alleged derailment of a, car a verdict for the defendant rightly ordered because the plaintiff was not on the car that was derailed.

Porter v. Boston Elev. Ry. 232-299

Not liable where a passenger was injured at a station while passing through a car of an elevated train from one platform to another. Passenger while on the car at most a licensee. Evidence that guard had previously told passenger it was "perfectly all right" for her to pass through car properly excluded.

Rhoades v. Boston Elev. Ry.
232-361

Liability of, where a woman passenger while attempting to reach a car at a subway station was carried

off her feet by a crowd around her and pushed or thrown into a space between the edge of the platform and a car standing on a curve. The, is not responsible for the location and construction of the platform in question. Duty of the, to control the crowd for the protection of the passengers.

Bryant v. Boston Elev. Ry. 232-549

Held that there was no evidence of negligence on the part of either the conductor or the motorman where a passenger was injured in alighting from a car.

Bush v. Boston Elev. Ry. 232-593

Held that there was no evidence warranting a verdict for the plaintiff in an action to recover for the death of the plaintiff's intestate who was struck and killed by a car.

Driscoll v. Boston Elev. Ry.
233-232

Judge not required in an action for injury caused by a collision to give a ruling that a person must look and listen for an approaching car before entering upon the tracks of a. Plaintiff permitted to testify as to how much his property was worth before and after the accident.

McNeil v. Middlesex & Boston St. Ry. 233-254

Liability of, for injuries to a person who while standing on the street was struck by a passing, car. Negligence of the conductor.

Pierce v. Worcester Cons. St. Ry.
233-301

No evidence of, where a woman passenger on a crowded car was pushed by the crowd and caused to fall through a door of the car when it was opened at a stopping place.

Knowles v. Boston Elev. Ry.
233-347

Ritchie v. Boston Elev. Ry.
238-473

Where plaintiff was injured when he was riding beside the driver of a sled which was run into by a, car. Held that the plaintiff was in the exercise of due care and that the motorman was negligent in not slowing down to avoid hitting the sled.

Bombard v. Worcester Cons. St. Ry. 234-1

Liability of, where plaintiff thrown to the ground and injured by the starting of a car as he was attempting to board it. Evidence showing

an implied invitation to the plaintiff to become a passenger.

Kendall v. Worcester Cons. St.
234-66

Liability of, where plaintiff was injured while riding on an automobile truck owned by O'B. Said injuries were alleged to have resulted from the fall of a trolley wire of the defendant causing the ignition of a load of highly inflammable matter on the truck upon which the plaintiff was riding. A release executed and delivered to O'B. by the plaintiff held to be a bar to the maintenance of the action against the.

Cormier v. Worcester Cons. St.
Ry. 234-193

Action for personal injuries to a passenger on a, car resulting from a collision between the car and a motor truck. Held that the evidence did not warrant a finding of negligence on part of the driver of the truck or on part of the employees of the.

McNiff v. Boston Elev. Ry.
234-252

A, is not liable for injuries caused by one of its cars running into a traveller who was walking in a space reserved for the operation of the, in the middle of a public way.

Crowell v. Boston Elev. Ry.
234-393

Where a passenger on an open car of the defendant was injured from the dripping upon her of a chemical solution which had been used in extinguishing a fire on the overhead structure of the defendant by firemen of the Boston fire department. Due care of the plaintiff. Negligence of inspector and motorman in causing the car to go ahead.

Flaherty v. Boston Elev. Ry.
235-422

Action for personal injuries caused by the plaintiff being struck in the left eye by a piece of metal, alleged to have been thrown from the defendant's car by reason of an explosion of a fuse box. A new trial on the ground of newly discovered evidence i. e. X-ray pictures tending to show that it was a bullet and not a piece of metal which entered the plaintiff's eye denied.

Davis v. Boston Elev. Ry.
235-482

Action for damages caused by a collision between the plaintiff's team and a, car. Finding warranted that

the motorman was negligent in operating his car at an excessive and unreasonable rate of speed at that time and place and was negligent in failing to give the signals required.

Connolly v. Boston Elev. Ry.
236-173

Liability of, where a passenger on an elevated train of the defendant was thrown from a crowded car upon the opening of the center door before the train came to a stop at one of the stations of the defendant. Correctness of judge's charge to the jury.

Moulton v. Boston Elev. Ry.
236-234

Liability of, and county where plaintiff's intestate was killed while travelling across a bridge. Neither the county nor the, were liable for the negligence of the draw tender.

Braley v. Mass. Northeastern St.
Ry. 236-275

Collision between an automobile and a, car. Negligence of plaintiff and motorman. Recovery by plaintiff for injuries caused by a fall in the hospital after the accident.

Clayton v. Holyoke St. Ry.
236-359

Liable where a person was hit by the running board of an open electric car. Plaintiff not negligent. Negligence of the motorman for jury.

Gerhart v. Holyoke St. Ry.
236-392

Not liable where a child three years old while unattended on the street was struck and injured by a car.

Parsons v. Boston Elev. Ry.
236-415

Where the plaintiff a passenger on a street car was thrown off the car while it was passing over a curve and while lying on the street was run over and seriously injured by another car of the defendant immediately following. Contributory negligence of the plaintiff and dire care of the motorman. Effect of voluntary intoxication of the plaintiff on his right of recovery.

Bilodeau v. Fitchburg & Leominster St. Ry. 236-526

Where the plaintiff's intestate while lying between the rails of a, at an early hour of the morning in the winter time in a sparsely settled neighborhood "right out in the coun-

try" was run over and killed by a, car. Held that the evidence including the plan and photograph failed to show negligence on the part of the motorman.

Bohanon v. Middlesex & Boston St. Ry. 237-27

Where plaintiff was struck by the rear end of an electric, car as it swung around a curve. Finding of negligence on the part of the defendant not warranted.

Fairbanks v. Boston Elev. Ry. 237-127

Liabie to plaintiff for personal injuries sustained by slipping upon ice and snow on the step of an electric car while alighting therefrom. Due care of plaintiff and negligence of the defendant.

Parker v. Middlesex & Boston St. Ry. 237-291

Where conductor and motorman injured by a collision between a, car and a motor truck standing upon the, track in a "cut." Negligence of the defendant's operator and of the conductor and the motorman. Use of the "cut" for travel.

Lounsbury v. McCormick 237-328

Action for personal injuries received when an automobile in which the plaintiff was riding with her husband who owned and was operating it ran into a team upon the highway because he became blinded by a glaring headlight upon an approaching electric, car. Held that a circular letter of the railroad commissioners as to the use of lights on, cars although admitted in evidence did not establish negligence on the part of the defendant or its servants.

Tupper v. Union Street Railway 237-485

The conductor is not bound to assist passengers while alighting. Failure of the conductor to render assistance is not negligence.

Gatchell v. Boston Elev. Ry. Co. 238-185

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NEUTRAL LAWS

(No case found)

NEW TRIAL

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II Grounds for

III Procedure

I In General

Held that there was no abuse of discretion and no error of law in the judge's denial of a motion for a. Com. v. Russ. 232-58

Motion for a, rightly denied where motion had reference to questions of law which might have been raised during the trial.

Crowdis v. Hayward. 233-377

Granting of a, is discretionary with the trial judge.

Flynn v. Johnson. 234-36

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Davis v. Boston Elev. 235-482

In an action to recover damages for the death of the plaintiff's intestate held that the contention of the plaintiff that a, be granted cannot be supported.

Kaminski v. Fournier. 235-51

In denying a motion for a, the judge need not make any findings of fact.

Davis v. Boston Elev. Ry 235-482

Held that the record failed to reveal an abuse of judicial discretion or any error of law in the denial by the judge of a motion for a.

Davis v. Boston Elev. Ry. 235-482

Because of the absence of one of the attesting witnesses at a trial of issues or an appeal from a decree of the Probate Court allowing a will the appellants are not entitled to a, where they went to trial without insisting that all the attesting witnesses should be called, where they made no request for a ruling on this question and no exceptions were taken by them.

McLehose v. Feird. 236-487

Exceptions to the refusal of the judge to set aside the answer of the jury to one of the issues and to grant a, overruled.

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II Grounds For

A new trial on the ground of newly discovered evidence i. e. X-ray pictures tending to show that it was a bullet and not a piece of metal which entered the plaintiff's eye denied.

Davis v. Boston Elev. Ry. 235-482

Motion for a, in an action for personal injuries on the grounds of newly discovered evidence and of a mistrial of the case properly denied.

Lounsbury v. McCormick 237-328

A mistake in failing to follow a ruling of law erroneously adopted to a decision contrary to the rights of the parties on the facts found to be true does not require a, when it is manifest that a just decision in the light of the governing correct principle of law has been made.

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III Procedure

Whatever questions might have been raised at the trial on the merits, cannot be presented as of right on a motion for.

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NINEPINS

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NOLLE PROSEQUI

(No case found)

NOLLE CONTENDERE

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As to, in actions for personal injuries resulting from snow or ice. Stefani v. Freshman . . . 232-354
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Held that defendant could terminate the contract upon reasonable, to the plaintiff.

Emerson v. Ackerman . . . 233-249

The general, by publication and mailing in proceedings for the probate of a will are sufficient for the probating of the will even if the, did, not reach those interested in the estate.

Renwick v. Macomber . . . 233-530

A recital in an officer's amended return as to, of sale on execution must be taken as true. Service of, of sale on execution held sufficient under R. L. C. 178 § 44.

Day v. Boule 234-25

A letter sent to one of the selectmen of a town held to be a sufficient, under the provisions of St. 1912 C. 221 as to, of the time, place and cause of injury.

Maloney v. Cohasset 234-284

Where the owner signs on the back in blank a transfer of stock "as collateral" and delivers it to his own employer to enable him to obtain with shares of his own a loan of money from a bank, any person who thereafter receives such certificate of stock whether in pledge or rehypothecation receives it with, that the original transfer was conditional and could not be divested except by strict foreclosure.

Crosby v. Simpson 234-568

A finding by a judge of the Superior Court that no sufficient, was given of the filing of a bill of exceptions and a dismissal of the exception for that reason cannot be received by the full court.

Day Pet'r 234-576

Where the plaintiff the assignee of certain accounts gave no, of the assignment to the debtors he cannot recover against a later assignee of the same accounts for money had and received.

Rabinowitz v. Peoples Nat. Bk. 235-102

As to failure of the insured to give the required, of loss. Held that there was no waiver of such, by the insurance company.

Navickis v. Firemen's Fund Ins. Co. 235-256

Persons having business relations with cities and towns are bound to take, of the scope of the authority of those professing to act as agents.

Simpson v. Marlborough . 236-210

Held that the mortgagees who were the plaintiff's counsel had actual, of the pendency of the proceedings.

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NOTICE TO QUIT

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NOVATION

Held in an action to recover a commission for the sale of certain property that by agreement of all parties there was a, by the terms of which B (the seller) was discharged from liability and the defendant (the purchaser) by his promise was substituted as the plaintiff's debtor.

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I Civilly

- 1 GENERALLY
- 2 ABATEMENT
- 3 CONTINUANCE
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- 5 LIABILITY
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II Criminally

I Civilly

- 1 GENERALLY

An unregistered automobile operated upon a highway is a.

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Plaintiff held to have no right of relief in equity for a, because of the violation of a city ordinance by the defendant.

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The Legislature cannot legalize what otherwise would be a, of such nature as to amount to a taking of private property for a public use, and at the same time confer immunity from liability upon the one establishing the.

Saltonstall v. N. Y. Central R. R. 237-391

- 2 ABATEMENT

Of, under the provisions of St. 1914 C. 624 where premises used for

prostitution, assignation or lewdness.
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Equity cannot enforce an order of the board of health to abate a, on the defendant's premises where it does not appear in the proceedings that a "source of filth" or "cause of sickness" existed on the premises of the defendant.

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5 LIABILITY

(a) *Occupier*

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6 PROCEDURE

The inability of the master to determine whether the defendant's use of the premises was a, required that the bill be dismissed without prejudice and without costs.

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7 PUBLIC, WHEN ACTIONABLE

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II Criminally

Indictment charging the defendant with maintaining a, i. e. keeping a disorderly house. Acquittal of the defendant on the charge of being a lewd person is not a defence to such indictment.

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As to the amount of the attaching officer's charges for the attachment, custody, and keeper's fees.

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An, having in his hands an execution authorizing the arrest of a judgment debtor is not obliged before making an arrest thereon to demand payment or to search for property on which to levy the execution.

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A return by a constable concerning the service of the statutory notice in an action for personal injuries resulting from snow or ice is prima facie evidence of the facts therein stated.

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A warrant for the arrest of a person in extradition proceedings cannot be served by an, of the division of State Police, when.

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I In General

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Atty Gen'l v. Methuen . . . 236-564

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- 2 BETWEEN PARTNERS
- 3 BY PARTNERS

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Liability of a bank for the, of a check after receiving an order to stops its.

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Finding warranted by the evidence that the purpose of the conveyance was not to follow but to abandon the layout of the, and that the grantee acquired no easement in a portion of a certain avenue named on said. *Stevens v. Young* 233-304

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II Alder by Verdict

III Answer

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V Demurrer

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VII Pleas in Bar

VIII Repleader

IX Replication

I In General

R. L. C. 173 § 85 which provides that "Pleadings shall not be evidence on the trial, but the allegations therein shall bind the party who makes, them" construed and applied. *Woodworth v. Fuller* 235-443

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IV Declaration

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In an action for breach of contract by an inventor against a corporation it was held that the, set out no cause of action. *Beaudry v. Hamel Shoe Mach. Co.* 235-503

Held that a, in an action for a maritime tort set out a cause of action entitling the plaintiff to indemnity for his injuries.

Proctor v. Dillon 235-538

Allowance of an amendment to plaintiff's, upon a case stated.

B. & M. R. R. v. T. Stuart & Son Co. 236-98

Held that two certain instruments as stated being negotiable promissory notes a, in an action on said notes need not set forth any consideration.

Goodfellow v. Farnham. 236-453

Insufficiency of the plaintiff's, in an action to recover for personal injuries caused by the alleged defective condition of a sidewalk in front of the defendant's premises.

Carney v. Proctor. 237-203

In an action of tort to recover for damages caused by the maintaining or operation of a railroad it was held that the third count in the, did not set out a cause of action in tort and, was improperly joined with counts one and two which were counts in tort.

Saltonstall v. N. Y. Central
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Facts set forth in the defendant's "Motion and Plea" held not to constitute matter in abatement but in bar.

White v. E. T. Slattery Co. . 236-28

A, in the trial for arson of several defendants overruled.

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IX Replication

In a criminal case held that there was no necessity for a, by the Commonwealth to a plea in abatement.

Com. v. Kozlowsky. 238-379

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Bill to set aside a sale of bonds of the plaintiff which had been pledged by it to defendant and also to redeem the bonds from such sale.

Winchester Rock & Brick Co. v. Murdough. 233-50

As to wrongful sale of pledged goods by the pledgee. Liability of pledgee for conversion.

Whitman v. Boston Terminal Refrigerating Co. 233-386

Where the owner signs on the back in blank a transfer of stock "as collateral" and delivers it to his employer to enable him to obtain with shares of his own a loan of money from a bank any person who thereafter receives such certificate of stock whether in, or rehypothecation receives it with notice that the original transfer was conditional and could not be divested except by strict foreclosure.

Crosby v. Simpson. 234-568

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Mandamus granted to compel the reinstatement of the petitioner as a, in a city water department.

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POLICE, DISTRICT AND MUNICIPAL COURTS

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On appeal from an order of the Appellate Division of the Boston Municipal Court where there is evidence warranting the findings of

the trial judge such findings will not be reviewed by the full court.

Saunders v. Smith Granite Co.
232-1

The decision of the Appellate Division of the Boston Municipal Court in denying a petition to establish a draft report is final from which there is no appeal.

Jackson Caldwell Co. v. Poto
235-58

The right of appeal from the Boston Municipal Court to the Superior Court in all cases where by compulsion of law and not by election they are brought in such Municipal Court is not affected by the provisions of St. 1912 C. 649 § 2 as amended by St. 1914 C. 35 § 2 C. 409.

Lynn Gas etc. Co. v. Creditors
Nat. Clearing house. 235-114

The jurisdiction of the Appellate Division of the Boston Municipal Court extends only to cases in which there is no right of appeal to the Superior Court.

Lynn Gas etc. Co. v. Creditors
Nat. Clearing House. 235-114

A writ of review being a new action or proceedings is not subject to report to the Appellate Division of the Boston Municipal Court.

Lynn Gas etc. Co. v. Creditors
Nat. Clearing House. 235-114

The raising of a genuine question of law on the record under the circumstances as stated prevented the case becoming "ripe for judgment" in the Boston Municipal Court under R. L. C. 177 § 2.

Lynn Gas Co. v. Creditors Nat.
Clearing House. 237-505

Held that the case did not become "ripe for judgment" in the Boston Municipal Court until after the rescript from the full court.

Lynn Gas Co. v. Creditors Nat.
Clearing House. 237-505

Held that a judgment entered in the Boston Municipal Court the next week after the rescript was received from the full court was entered rightly.

Lynn Gas Co. v. Creditors Nat.
Clearing House. 237-505

A party desiring to preserve his right of determination of matters of law in cases tried in the Boston Municipal Court, must, where the objection is to the admission or exclu-

sion of evidence claim a report to Appellate Division of that court at the time of the ruling. St. 1912 C. 649 § 8.

Spevack v. Budish. 238-215

The Commonwealth has the right to appeal to the Superior Court from a judgment of a Police Court in an action upon the bond of a public warehouseman without filing an appeal bond.

Com v. Fidelity & Casualty Co.
238-577

POLICE OFFICER

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Action by a, to recover for services alleged to have been performed by him after his alleged unlawful discharge by the defendant city.

Ladd v. Newburyport. . . . 232-570

See Evidence V, 2

Forfeiture by the police of a revolver carried contrary to the statute. A, who as property clerk of the police department has had a revolver placed in his keeping after having been taken from a person carrying the same contrary to the statute and who retained it for more than fourteen days without complying with the provisions of law in disposing of it becomes a trespasser ab initio and is liable to the rightful owner of it for conversion.

Boston Five Cents Savings Bk. v.
Searles. 237-489

Where it was alleged that the plaintiff's testator a, was killed by a fall down a trap door hole in a vacant store owned by the defendant which it was alleged he had entered in performance of his duty. Held that the evidence did not warrant a verdict for the plaintiff.

Brennan v. Keene. 237-556

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POOL AND POOLS

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POOL TABLE

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POOR DEBTOR

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I In General**II Charges of Fraud****III Oath****IV Recognizance****I In General**

(No case found)

II Charges of Fraud

(No case found)

III Oath

Under the conditions the order refusing the, to the, was not a "final order." The "final order" was when later the, was administered and the, discharged. The court committed no error in directing the clerk to remove the certificate from the execution and in ordering the, discharged.

Sallinger v. Hughes 235-104

IV Recognizance

On facts held that the creditor had waived the breach of the.

Sturman v. McCarthy . . . 232-44

Action against the surety on a, for an alleged breach of the. Court record is conclusive and binding on the parties. Held that the evidence did not warrant a finding that there had been any breach of the.

Mc Keon v. Briggs 233-99

Sallinger v. Hughes 235-104

Action against a principal and a surety on a. Held that there was no evidence of any breach of the. An action on a, can be maintained by a judgment creditor in his own name

for the benefit of the assignee of the judgment.

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See Jurisdiction I, Prohibition, Surety

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POWER

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Second wife held not to have taken under her husband's will any property belonging to his first wife the testator having no, to dispose of the same by his will.

Homans v. Foster 232-4

Exercise by a testatrix of a, of appointment given to her under the will of her mother.

Dunbar v. Hammond . . . 234-554

Exercise of a, of appointment by a son given to him by his mother's will. Words, "lineal heirs" defined.

Ernst v. Rivers 235-9

A, of appointment of property real or personal in favor of children is well exercised by an appointment to trustees in favor of children.

Greenough v. Osgood . . . 235-235

Reservation of a special, of appointment over the trust property by the donor of a trust in contemplation of marriage. Exercise of such, by such donor by her will.

Greenough v. Osgood . . . 235-235

Held that the testator in the, ninth clause of his will exercised a, of appointment and appointed to his widow the net income not only of the property which he owned outright but also of the trust fund under his father's will.

Ames v. Ames 238-270

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PRACTICE

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I Civil Actions

- 1 BEFORE TRIAL
- 2 DURING TRIAL
- 3 AFTER TRIAL

II Criminal Cases**I Civil Actions****1 BEFORE TRIAL**

Trial judge may refuse to frame issues to be tried by himself when the issue is a narrow one and is made perfectly clear by the pleadings.

Sherry v. Littlefield. 232-220

An appearance by an attorney for one defendant in an action against several defendants is not a general appearance for all the defendants.

Hanzas v. Flavio. 234-320

Where an attachment has been made in trustee process though no personal service had been made on the defendants the giving by them of a statutory bond to release the attachment operated as a general appearance by such defendants.

Britton v. Goodman. 235-471

The refusal to grant a postponement presents no question of law.

Noble v. Mead-Morrison Mfg. Co. 237-5

By the general appearance of the defendant the court acquired jurisdiction over the defendant. Thereby the defendant waived any objection which he might have raised as to the faulty venue of the action.

Paige v. Sinclair. 237-482

2 DURING TRIAL

It is within the sound discretion of the trial judge whether and to what extent the contradiction of immaterial testimony should be allowed.

Com. v. Russ. 232-58

Question whether the deceased was talkative or self-contained rightly excluded.

Com. v. Russ. 232-58

It is for the trial judge upon conflicting evidence to determine the questions of fact involved in them. To certain facts it is proper for trial judge to refuse to make an finding.

Garratt-Ford Co. v. Brennan 232-493

A request for an instruction to a jury which is framed in an argumentative form and emphasizes facts selected in the interest of the requesting party need not be granted.

Whitman v. Fournier. 233-154

Ruling rightly denied that upon all the evidence the plaintiff was entitled to recover when the evidence is conflicting.

McNeil v. Middlesex & Boston St. Ry. 233-254

A request for a ruling as to ascertain fact assumed to be true need no be given if the evidence is conflicting.

McNeil v. Middlesex & Boston St. Ry. 233-254

A statement in a brief that the plaintiffs do not care to discuss the validity of an alleged debt held not to be treated either as an admission or as a waiver.

Brown v. B. & M. R. R. 233-502

A judge is not required to single out specific facts for special treatment.

Morrissey v. Conn. Valley St. Ry. 233-554

The order of proof is within the discretion of the trial judge.

Dean v. Vice. 234-13

Remark made by counsel for the defendant at the close of an instruction in the judge's charge does not preclude the defendant from relying on an exception already saved at the time of the remark.

Kendall v. Worcester Cons. St. Ry. 234-66

Refusal to order a mistrial proper where the jury were instructed to disregard entirely a certain statement of a witness.

Buoniconti v. Lee. 234-73

In an action for personal injuries a request for a ruling made by coun-

sel for the plaintiff at the end of the supplemental instructions properly refused. The subject of negligence of the motorman was fully covered by the instructions given.

Mones v. Bay State St. Ry. 234-82

Whether or not special questions shall be submitted to the jury is discretionary with the trial judge.

Mercier v. Union St. Ry.. 234-85

A request for a ruling that there was no evidence as to a certain light on an approaching street car properly refused.

Mercier v. Union St. Ry.. 234-85

The defendant is not entitled to a ruling on the sufficiency of the plaintiff's evidence at the close of the plaintiff's case unless he waives his right to offer evidence.

Antonacopoulos v. Arax Grocery Co. Inc.....234-125

In an action for personal injuries caused by snow and ice it was held that there was no substantial error disclosed in the charge resulting in a mistrial and that the paragraph in the charge alleged to be harmful was not open to objection.

Chestnut v. Sawyer.....235-46

Power of trial judge to exclude a hypothetical question asked of an expert.

Earle v. N. Y. Cent. & Hudson River R. R.....235-61

The submission of special questions to the jury is a matter within the discretion of the court.

Hanneman v. I. Shlivek & Sons Inc..... 235-317

A judge sitting without a jury is not required to make findings of fact at the request of either party.

James Elgar Inc. v. Newhall
235-373

Held that there was no impropriety in the use made of the pleadings by counsel.

Woodworth v. Fuller 235-443

There is no error in the denial of requests for rulings where it does not appear on the record what if anything the subject matter of the requests had to do with the issues involved in the trial or showing or tending to show their pertinency or that the defendant was injured by their refusal.

Levine v. Cohen.....235-446

A request for a ruling based upon an assumption of fact contrary to the finding of the trial judge is rightly denied.

Levine v. Cohen.....235-446

The order of the admission of evidence is within the discretion of of the trial judge.

Mason v. Jacot.....235-521

Bilodeau v. Fitchburg & Leominster St. Ry.....236-526

Noble v. Mead-Morrison Mfg. Co.
237-5

As to separate trial of issues of substances.

White v. E. T. Slattery Co.
236-28

Election at trial by the plaintiff of the cause on which he expected to recover.

Goldsmith v. Traveler Shoe Co.
236-111

Counsel's opinion given in argument should be disregarded by the jury.

Betts v. Rendle.....236-441

Mistrial in an action for personal injuries because a certain question submitted to the jury was not applicable to the issues raised by the pleadings and because no question was submitted to the jury as to negligence on the part of the defendant its servants or agents.

Cotter Petitioner237-68

Held that the answer of the jury to the oral question of the judge in an action for personal injuries had the force of a special finding of fact.

Cotter Petitioner.....237-68

Where evidence otherwise inadmissible goes in without objection the question of admissibility is not open. The party claiming to be aggrieved must either except or move that the testimony alleged to be incompetent should be stricken out.

Hollis v. Lynn.....237-135

Results of failure of a party to produce its books and accounts when summoned by a subpoena duces tecum or to produce at the trial or reasonable demand writings which are material to the issue.

Gregg v. Puritan Tr. Co. 237-146

If a party is not satisfied with the instructions given he should ask for more definite instructions when given the opportunity by the court.

Clarke v. Mass. Title Ins. Co.
237-155

Held that the improper admissions in evidence of a declaration of a deceased was not corrected by the judge's charge.

Horan v. Boston Elev. Ry. 237-245

Judge not required to grant requests which single out a part of the relevant but controverted facts an ask for a ruling as to their effect.

Lounsbury v. McCormick 237-328

Held that the judge was in error in ruling that as a matter of law certain items in the pay-roll books of the plaintiff which were admitted in evidence had not been proven and that they should not go as exhibits to the jury.

Annawan Mills Inc v. Mangene 237-451

Discretionary with the presiding judge to limit and restrict the opening statement of counsel to the jury.

Posell v. Herscovitz 237-513

Discretionary with the presiding judge to permit the defendants to use their bookkeeper as a living model in the presence of the jury for the purpose of trying on a "suit coat" designed by the plaintiff.

Posell v. Herscovitz 237-513

In the trial of an action at law without a jury the judge's general finding is conclusive if there was any evidence to support it. The judge is not bound to make specific findings of fact as requested in the defendant's so called "request for rulings."

Commercial Credit Co. v. M. McDonough Co. 238-73

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Com. v. Homer 235-526

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Com. v. Feci 235-562

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Hayden v. Keown 232-259

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On facts administrator found not to be a suitable persons and the decree of the, appointing him should be reversed.

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Withington v. Fidelity & Casualty Co. 237-73

The, has jurisdiction over petitions for separate maintenance. The mere filing of a libel for divorce by the husband as stated did not strip the, of jurisdiction to proceed to a final decision of the petition for separate maintenance theretofore brought by the wife and ripe for hearing. Such right of the, is not suspended until the Superior Court acts.

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Hurlburt Rogers Mach. Co. v. B. & M. R. R.235-402

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Donham v. Public Service Commissioners 232-309

The title to the property of a street railway corporation is not transferred to the. He becomes its custodian not its owner.

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A street railway corporation is not dissolved in form or in substance by the appointment of a.

Collector of Taxes v. Bay State St. Ry. 234-336

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Collector of Taxes v. Bay State St. Ry. 234-336

The appointment of a, for a street railway corporation does not affect the liability of the corporation for the commutation excise tax for that part of the year following the ap-

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Collector of Taxes v. Bay State St. Ry. 234-336

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Sullivan v. Hustis. 237-441

A federal, of a railroad corporation is made liable under the statutes of this Commonwealth to actions in tort under St. 1906 C. 463 Part II § 245 for personal injury or loss of life arising from failure to give the signals required by § 147 to the same extent as the corporation owner would be liable if operating the railroad itself.

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Held that the right of the, on behalf of the creditors was fixed by relation to the time of the filing of the bill and that he took the property of the respondents in the bill as of that time although he was subsequently appointed.

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Where, describes the land to which the, applies as bounded "by" or "on" a private way the land is released to the centre of the way if there is nothing in the deed which requires a different construction.

McCarthy v. Everett . . . 234-231

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Action of, by a trust company against a deputy sheriff to recover four motor trucks attached and taken possession of by a deputy sheriff in an action by the proprietor of a garage against the owner of the trucks for their storage. Evidence of the treasurer of the trust company and of its counsel to the effect "that

the trucks were turned over as security" and that the owner of the trucks "turned over to the plaintiff in pledge the four trucks described in the plaintiff's writ as security on account of said indebtedness.

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A, although discharged may be resorted to for any rightful purpose.

Reno v. Cotter 236-556

The failure of the plaintiff in a bill in equity for more than a year and a half to file in the full court a, by a judge of the Superior Court was abundant reason for discharging it.

Reno v. Cotter 236-556

A, must be presumed in the absence of indications to the contrary, to state all the evidence material to the questions of law presented.

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Of a tax commissioner. It was proper for the judge to draw inference from the statements in the, which he deemed relevant and admissible. And his findings in the absence of any error of law are conclusive. Of

tax commissioner is "prima facie evidence of the facts therein found" when.

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Findings voluntarily filed by the judge stand on the same footing as a, of facts made under R. L. C. 159 § 23.

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By a judge of the Superior Court of an action at law where a judgment had been ordered for the plaintiff in accordance with the findings of the auditor.

D'Urso v. Leone 238-58

By the terms of the, under which this case has been heard and upon which it must be decided the plaintiff in accordance with the stipulation of the parties gets judgment unless "upon the law and facts and findings of the jury --- the defendant is entitled to a verdict" while the, states that the defendant excepted to the ordering of a verdict on the evidence and the answers to the questions submitted, its form does not permit a new trial in case this or any other exception was well taken unless as matter of law he was entitled to a verdict.

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A delay of over a year in filing a draft, held to be gross violation of Rule 55 (1915) of the Superior Court. A delay of more than a year after the time allowed by the last special order rendered it beyond the jurisdiction of the presiding judge to, the case under G. L. 231 § 111.

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Sufficiency of the allegations in a complaint charging the common law offence of a.

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A parade on a public street without permission is unlawful.

Com. v. Frishman 235-449

It is not necessary to constitute a, that all the defendants should commit some physical act, it is enough that they were present aiding and abetting by their presence. It was not necessary to convict of a, to show that the officer was stabbed by one of the paraders with a knife or that he was stabbed at all. It was not necessary to a conviction to prove that the persons who took part in the parade were commanded to disperse by any of the officials named in R. L. C. 211 § 1. The offence charged being at common law exists wholly independent of the statute.

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Held that the note in question the last of a series of renewal notes was without consideration because when it was given the debt of the defendant had under the provisions of § 51 of the, Act been discharged. The giving of the renewal notes from time to time did not constitute in each instance a new loan. The payments made on account of principal

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As to the foreclosure of mortgages under the, where the mortgagors were the trustees of a real estate trust and some of the shareholders were in the military service within the. Shareholders need not be joined as parties. Held that the plaintiffs were entitled to a decree authorizing the foreclosures.

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A title to real estate not good on the record may be shown by oral or other evidence outside the record to be marketable beyond any reasonable doubt so that, of a contract for conveyance will be enforced in equity.

Morse v. Stober 233-223

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Bill by plaintiff to enforce, of a written contract of the defendants D. and Arg. to convey to him certain real estate "by a good and sufficient deed ——— conveying a good and clear title to the same free and clear of all incumbrances except a mortgage for ———" which agreement was duly recorded. Several weeks later the defendants D. and Arg. conveyed the same real estate to the third defendant A. Some time after the first agreement was made the plaintiff learned that the defendant D. was a married man.

Held that the plaintiff was entitled to a decree for the, of the contract by the defendant A. to the plaintiff upon payment of the balance of the purchase price less the value of the dower right.

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Does not apply to an oral agreement between the plaintiff and the defendant by which the defendant agreed to purchase a certain tract of woodland, that thereafter the defendant and the plaintiff would jointly cut and sell the wood on the land for the common benefit of both parties that the defendant would pay the original purchase price of the land and that the plaintiff would repay to him one half thereof out of his half of the proceed of the sale of the wood.

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Bill to enforce the liability of an officer of a corporation for a debt of the corporation. The plaintiff's remedy is not penal under R. L. C. 202 § 5 and proceedings can be commenced at any time within six years after the cause of action accrues.

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X Executors and Administrators

On facts action against the surviving executors held not barred by the special, although it was not commenced within the time specified in the.

J. Cushing Co. v. Brooklyn Trust Co.235-171

Held that the plaintiff a creditor who had obtained a judgment in another state against the ancillary administrator of the estate of the deceased debtor was guilty of "culpable neglect" in not prosecuting his claim against the administratrix of the estate appointed here within the time limited by R. L. C. 141 § 9.

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STOCK JOBBING

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The purchase and sale of stock by a broker who carries therein on margin for his customer are not prohibited by R. L. C. 99.

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I In General**II Cestui Que Trust****III Construction****IV Declaration of Trust****V Precatory Trusts****VI Notice****VII Resulting Trusts****VIII Termination****IX Trustee****X Voluntary Settlements****I In General**

Held that the transfer of certain stock by the husband to his wife was not intended to be held by the wife in, for the husband but was intended to be and in fact was a complete gift.

Tileston v. Tileston..... 234-530

The, fund devised to the Mass. Inst. of Technology for the purpose of founding and endowing the "Pratt School" is a, for charitable purposes. Mass. Inst. of Technology v. Att'y Gen'l..... 235-288

Bill for an accounting under a, agreement between a savings bank the first mortgagee and the second and third mortgagee and the owner of the real estate after the death of such owner.

Dailey v. Doherty..... 237-365

Held that instead of a pure, a partnership existed for the purposes of carrying on business for the mutual benefit of the shareholders of a building trust although the legal title to the property stood in the name of the trustees. Held that the trus-

tees were the managing agents subject to the control of the shareholders.

Howe v. Chinielinski 237-532

II Cestui Que Trust

Held that under a certain clause in a will as stated a spendthrift, attached to the son's interests in the estate and that the son had no absolute rights as a beneficiary which could be taken for the payment of his debts.

Morel v. Cornell 234-563

III Construction

See VIII

Of a, created by a will giving the husband of the testatrix a life estate with remainder to the children. Words "legal representatives" defined. Effect of sale of property by the life tenant with the consent of the remaindermen. Ordered that the trust fund be distributed among the children to the exclusion of the widow of the father.

Conant v. St. John 233-547

Of a, provision in a will providing for the erection and maintenance of a home for aged women. Held that such provision created a charitable. As to the support of certain necessitous old ladies pending the establishment of the home.

Boston Safe Deposit & Tr. Co. v. Att'y Gen'l. 234-261

Where a provision of a will as to a certain, under the will provides that every payment of income or principal should be made personally to the beneficiaries and that no part of such principal income or increment should be attachable, assignable, trusteeable or liable to be taken for any debt of the beneficiaries the trustee received a legal title in the trust property, each of the beneficiaries received an equitable interest which was inalienable and neither the assignee nor the trustee in bankruptcy of one of the beneficiaries received any title to his share in the trust property.

Haskell v. Haskell 234-442

Of a declaration of trust in contemplation of marriage. Held it was intended by the donor that the trust should be administered here and that a Massachusetts court had jurisdiction of a bill in equity by the

trustees for instructions. Vesting of the trust property.

Greenough v. Osgood . . . 235-235

Where by his will the testator established two trust estates in favor of his two younger children until they reached the age of thirty years respectively; and without any provision in the will for the disposition of the remainder. Held that when the survivor of the two younger children reached the age of thirty years both trusts came to an end and the real estate comprising both trusts must be held to be intestate property.

Shea v. Maitland 237-221

Where the beneficial interest in a trust created by a will is claimed by two corporations neither of whose names exactly corresponds to that given in the will evidence is admissible to aid in its construction.

Kingman v. New Bedford Home For Aged 237-323

Provision of a trust fund under a will construed as to what portion of the trust fund the widows of the deceased sons of the testator took. Division of the trust estate among the beneficiaries. Legal effect of certain assignments and agreements by the beneficiaries of the trust after the death of the testator.

Stowell v. Ranlett 238-599

IV Declaration of Trust

Held that the acts and statements of the defendant's intestate were not sufficient to create a trust in a note and mortgage. An executory purpose to do so is not enough. Neither can an imperfect gift be interpreted to be a.

Cardoza v. Leveroni 233-310

As to an attempt to create a, by a residuary clause in a will where the persons to be benefited are not defined by name or class.

Dunbar v. Hammond . . . 234-554

Reformation of a, on ground of mistake. Reformation denied where the trustees were not parties to the mistake and had assumed important contractual duties and responsibilities.

Coolidge v. Loring 235-220

Failure to prove. Held that the plaintiff's ancestor died intestate and that such ancestor's children took

such ancestor's real estate by descent in fee and not subject to any "condition" or "trust" or "life estate."

Cooper v. Monroe 237-192

V Precatory Trusts

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VI Notice

The fact that an account in a national bank stood in the name of the deceased as "Trustee" was sufficient to charge the administrator of the deceased with, of the existence of a.

Dailey v. Doherty 237-365

VII Resulting Trusts

On facts as stated where three persons purchased real estate and the title was taken in the name of two of them at the request of the third a, arises in favor of such third person of a third interest in such real estate.

Magee v. Magee 233-341

Bill by a street railway company to establish a, in land standing in the name of the defendant.

Boston & Northern St. Ry. Co. v. Goodell 233-428

Held there was a, in favor of the widow, the plaintiff, in certain shares of stock issued by a corporation to her husband and his brother which stock was issued in payment of a laundry business owned by the widow and sold by her to the corporation.

Glover v. Waltham Laundry Co. 235-330

Where two brothers became the owners of an eight ninths interest in a lot of land under their mother's will made an agreement to purchase the outstanding one ninth interest and pay the debts of their mother's estate in order that each of them should acquire a complete legal title to a one half interest in the real estate. Refusal by the defendant to give his brother the executor under the mother's will a deed in accordance with the agreement Held that a, was established in favor of the executor brother. Held that the Statute of Frauds was not applicable to such implied trust. Held that the plaintiff was not estopped by the items

in the executor's account nor by the recital in the executor's deed.

Brady v. Brady 238-302

Bill in equity by the husband to establish a, in certain real estate the legal title being in the name of his wife he having paid the consideration for the conveyance. What the plaintiff must show to make out a, in his favor. Presumption as to a.

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As to the distribution of trust property at the, of the trust. Time of vesting in interest of the beneficiaries.

Boston S. D. & Tr. Co. v. Wall 234-447

Bill to terminate a trust created by a will for the persivation by a town of a monument to be erected by the testator's executor and for the care and beautifying of the testator's lot in the cemetery, dismissed. Held that the trust was not repugnant to law or contrary to public policy and that its purposes had not been accomplished.

McCoy v. Natick 237-99

IX Trustee

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The right of a, under a will to be instructed is confined to her present duties and she cannot be instructed as to her past administration of the trust.

Forbes v. Brigham 232-177

Where a, is directed to invest the trust funds in real or personal property mortgage notes etc. "as in his discretion he may approve." As to what is a proper exercise of such discretion by such. Held that in making the investment stated in this case the, exercised good faith and sound discretion.

Kimball v. Whitney 233-321

Allowance of account of. As to items for compensation of the, and of his attorneys. Right of, to have reasonable compensation. Disbursements rightly made in the employment of agents and attorneys.

Hanscom v. Malden & Melrose Gas Light Co. 234-374

A change in capacity from executor to, may result where a, under a will who is also executor of the will and who was not required to give a surety on his bond as, and executor has shown by any authoritative and notorious act that he has elected to act in the capacity of.

Mass. Inst. of Technology v. Att'y Gen'l. 235-288

Where an employee of the plaintiff and another defendant were given a lease of the premises occupied by the plaintiff. Held that such employee and the other defendant were not constructive trustees of the lease for the plaintiff.

Goldstein v. Burrows. . . . 237-79

Vacating of decree of the Probate Court allowing the first, second, third, fourth, fifth and sixth accounts of a. Fraud of the.

Withington v. Fidelity & Casualty Co. 237-73

Bill by plaintiff to enforce specific performance of a written contract of the defendants D. and Arg. to convey to him certain real estate "by a good and sufficient deed ——— conveying a good and clear title to the same free of all incumbrances except a mortgage for ———" which agreement was duly recorded. Several weeks later the defendants D. and Arg. conveyed the same real estate to the third defendant A. Some time after the first agreement was made the plaintiff learned that the defendant D. was a married man. Held that A holds the title to the real estate as a constructive, for the plaintiff.

Melamed v. Donabedian . 238-133

Appointment and revocation of the appointment of a, under a will by the Probate Court.

Boynton v. Foss. 238-574

X Voluntary Settlements

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TRUSTEE PROCESS

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II Procedure

III Subject Matter

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I Adverse Claimant

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II Procedure

A claimant in, may be admitted as a party even if his title is not derived from the defendant by assignment and the claimant may show that there is nothing due from the alleged trustee to the principal defendant.

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III Subject Matter

Attachment of salary of municipal officer by. A bill in equity to reach and apply such salary cannot be maintained.

Hooker v. McLennan. . . 236-117

IV Trustee

As to the amount for which the, should be charged. Held that the, an express company was entitled to be credited with a certain amount due to it from the defendant under a decision of the State court of Oklahoma.

Reynolds v. Missouri, Kansas & Texas Ry. 233-32

Discharge of the, on motion by the claimant. Right of claimant to make such a motion.

Eastern Fur & Skin Co. v. Sternfeld. 233-210

Where the, in, was holding money belonging to the deceased husband of the defendant who was the sole executrix of and the sole legatee under her husband's will. Where in such case, was brought against such defendant personally and her husband's estate had neither been settled in the Probate Court nor been represented insolvent it was held that the, did not have in its possession when service of process was made goods effects or credits belonging to the defendant.

S. S. Pierce Co. v. Fiske. . 237-39

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UNITED STATES

The consent of the, to be a party in a proceeding in a State Court cannot be inferred from a remote and equivocal phrase in a resolution of Congress having direct and adequate reference to another matter.

Public Service Comm'rs v. N. E. Tel. & Tel. Co. 232-465

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UNLAWFUL DISCRIMINATION

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UNLAWFUL INTERFERENCE WITH CONTRACT

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Bill to enjoin the officers and members of a labor union from interfering with the plaintiff from obtaining and holding employment.

Shinsky v. O'Neil 232-99

An agreement between certain employers and a labor union that no person should be employed other than members of the union in good standing held to be valid.

Shinsky v. O'Neil 232-99

Injunction granted against members of a labor union to prevent them from combining to prevent by a strike or otherwise the employment of the plaintiff by a certain corpor-

ation. Amount of plaintiff's damages

Smith v. Bowen 232-106

Action for damages for unlawful interference with the plaintiff's business of selling to wholesale customers a varnish called "Varnish No. 25."

Edwards v. Buffalo Specialty Co. 234-521

Injunction granted employer where a labor union called a strike because the employer refused to accept a contract with the union which would in effect force the employer to employ only union workmen "to unionize his shop." Picketing and intimidation of employees by the use of abusive epithets scurrilous language and individual boycotting. Issuance of a circular letter boycotting the employer. Held that the purpose of the strike was unlawful and that the officers and members of the union were not protected by St. 1913 C. 690.

Folsom Engraving Co. v. McNeil 235-269

Held that a strike of a labor union against a corporation because one of the representatives of the corporation failed to attend a conference agreed upon between him and representatives of the labor union at a specified time and place was justifiable. Contempt proceedings against the members and officers of the labor union.

Walton Lunch Co. v. Kearney 236-310

Defendant held liable for the circulation of cards with false and malicious statements concerning the plaintiff's business printed thereon.

Godin v. Niebuhr 236-350

A strike to compel the plaintiff to employ a discharged workman is unlawful and can be restrained even if no illegal means were used to carry it into effect.

Mechanics Foundry & Mach. Co. v. Lynch 236-504

Although the strike was lawfully instituted by the defendants the plaintiffs may maintain a bill in equity to enjoin the illegal acts of the defendants i. e. picketing, intimidation of and causing annoyance to employees of the plaintiffs, holding

the plaintiffs up to the public as unfair," to organized labor etc.

Densten Hair Co. v. United Leather Workers.....237-199

Strike called in defence of "collective bargaining" or to compel the abandonment of the "individual contracts" held to be illegal. Held that the company could lawfully contract with machinists who desired to enter its service and as no law of the land was violated it could impose as a condition precedent to employment the terms of the "individual contracts." Held that the conduct of the pickets in threatening annoying or otherwise hindering other persons in the employ of the plaintiff was unjustifiable.

United Shoe Mach. Corp. v. Fitzgerald.....237-537

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Custom cannot be used to contradict the plain provisions of an ex-

press contract which the parties had made and substitute therefor another contract which the parties had not made.

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Contrary to law, is never admitted to control the general rules of law.

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A regulation of a school committee as to the renewal of certificates issued by physicians exempting pupils from, held to be valid.

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In an indictment for arson an averment that the house was the dwelling house of A. L. is satisfied by proof that it was an actual dwelling owned by A. L.

Com. v. Leventhal 236-516

Trial of an indictment for arson. Defence that the fire was set by one Lurie and not by Levine as charged.

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Judicial notice taken by the full court of the provisions of an order of the Director General of Railroads of the United States concerning the, of certain actions against railroads.

West v. N. Y. N. H. & H. R. R. 233-162

As to the distinction between jurisdiction and.

Paige v. Sinclair 237-482

In an action for personal injuries or damages caused by negligence the correct method of raising the question whether under G. L. C. 223 § 7 the, of the action is laid in the right county is by a motion to dismiss. By the general appearance of the defendant the court acquired jurisdiction over the defendant. Thereby the defendant waived any objection which he might have raised as to the faulty, of the action.

Paige v. Sinclair 237-482

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An exception will not lie to the refusal of a judge to direct a, for the defendant when there is evidence to support a, for the plaintiff.

White v. Weston 232-516

A general, in absence of other reversible error must stand if there was sufficient evidence to go to the jury upon any count.

Bergeron v. Forest 233-392

The presiding judge may properly order a, for the plaintiff where the facts are not in dispute.

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The trial judge after a return of a, for the plaintiff but before it has been affirmed and recorded may order a, entered and recorded for the defendant.

Flaherty v. Boston Elev. Ry. 235-422

Rightly ordered for the plaintiff in an action upon a promissory note given in part payment for certain goods. Statements of counsel to judge as to misrepresentations in connection with the goods.

Bennett v. Thompson . . . 235-463

As to the right of the defendant to raise in the full court any question of law actually involved after a, in his favor has been denied in the trial court.

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Ordering of, in actions of tort for personal injuries.

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 Kirby v. Tirrell 236-170
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Ordering of, in actions of tort for slander against a husband and wife.
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A, is first to be returned and recorded and interest thereon is to be added by the clerk from the date of the writ to the date of the, and this amount bears interest to the date of entering the judgment upon which execution issues.

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II Criminal Cases

In an trial for murder defendant's request that a, of not guilty be ordered rightly denied.

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Writ of prohibition denied to restrain the respondents as members

of the city council of the city of Boston from continuing to hold a hearing upon charges against the petitioner a, employee of the city of Boston.

Donlan v. City Council of Boston 238-557

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For reasons stated held that a finding was warranted that the, was bound by the acts of the acting treasurer in signing and endorsing certain promissory notes.

Horgan v. Morgan 233-381

Liability of the defendants individually upon a note signed by them as trustees of a. Proof of the existence of the, and the authority of the defendants to act for it.

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I Civilly**II Criminally****I Civilly**

In equity by the defendant of the objection that the plaintiff had a plain adequate and complete remedy at law.

White Sewing Machine Co. v.
Morrison 232-387

Plaintiff held to have not waived his right to assert his individual claim by failing to set up as executor the equitable defence of election. The plaintiff's individual rights not affected by a denial of a motion of plaintiff as executor in an action at law for a new trial in which to set up the principle of election.

Noyes v. Noyes 233-55

Remarks of defendant's counsel after the refusal of its request for ruling do not constitute a, of the requests.

Gondek v. Cudahy Packing Co.
233-105

On facts as stated held that there was no, of the required notice of loss by the insurance company.

Navickis v. Firemen's Fund Ins.
Co. 235-256

Statements of a life insurance agent as to the lapsing of a policy held not sufficient to modify the policy or to constitute a, of its provisions.

Hayes v. Metropolitan Life Ins.
Co. 236-476

Is an intentional relinquishment of a known right.

Suburban Land Co. Inc. v. Brown
237-166

Held that there was no, by the defendant of the defence of misdelivery by the plaintiff to a carrier other than the one named by the defendant in an action for goods sold and delivered.

St. John Bros. Co. v. Falkson
237-399

Action for damages caused by negligence. By the general appearance of the defendant the court acquired jurisdiction over the defendant. Thereby the defendant waived any objection which he might have raised as to the faulty venue of the action.

Paige v. Sinclair 237-482

Action by a surety company to recover premiums alleged to be due on a construction bond. By the plaintiff of its right to collect premiums until it received written notice of the completion of the contract or after the date of the actual completion of the work.

Title Guaranty & Surety Co. v.
Ley & Co. Inc. 238-113

II Criminally

All matters in abatement are waived by a general plea of not guilty.

Com. v. Leventhal 236-516

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The Commonwealth has a right to appeal to the Superior Court from a judgment of a Police Court in an action upon the bond of a public, without filing an appeal bond.

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II Public Rights

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III Private Rights

Construction of an agreement between the owner of land bounded on a, and the owner of a dam across the, on the question of damages where the land was taken for purposes of a water supply.

Battelle v. Worcester... 236-395

Tort for the destruction of an ice crop by the defendant in draining a mill pond upon the plaintiff's land

by raising the gates of a dam owned and maintained by the defendant upon its land. The test of liability is whether the defendant in what it did in the exercise of its right made a rational use of the impounded water, having due regard to all the circumstances connected with the right of the plaintiffs to make a similar use of the water while overflowing their land, whether in fluid or solid state.

Taft v. Bridgeton Worsted Co.
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IV Surface Water

Bill to enjoin the defendant city from draining water from a public highway across land of one H. and of the plaintiff dismissed.

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WATERWORKS

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Damages for the taking of land for a water supply. Held that the petitioner had not sustained the burden of proof as to the title to the property.

Kronoff v. Worcester....234-254

Bill in equity by a town against a water company to restrain the raising of water rates to domestic consumers. Held that the rates and prices to be charged to the domestic consumers for water was not fixed by a certain contract between the town and the water company.

Oak Bluffs v. Cottage City Water Co.....235-18

Construction of an agreement between the owner of land bounded on the thread of a stream and the owner of a dam across the stream on the question of damages where the land was taken for purposes of a water supply.

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II Betterments

Writ of certiorari issued to quash proceedings attempting to assess a, tax upon certain land. Veto of the mayor.

Jewett v. Mayor of Medford
233-65

Held that an assessment for, for the widening of an existing street and the laying out of a new street constituting a single improvement or "alteration" of the existing street was valid.

Quinn v. Mayor etc. of Springfield
233-595

III Discontinuance

Held that the use of a certain private way was limited to the occupants of certain buildings and that

when the buildings were destroyed the right of way was extinguished.
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236-176

IV Fences

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4 DEFECTS

For injuries to a traveller on a alleged private way caused by a defect in the sidewalk.

Sullivan v. Worcester... 232-111

In an action for personal injuries caused by a defect in the sidewalk, held that the due care of the plaintiff, whether the way was defective, and the due care or negligence of the proper town officers were for the jury.
Junkins v. Stoneham. . . 234-130

A letter sent to one of the selectmen of a town held to be a sufficient notice under the provisions of St. 1912 C. 221 as to notice of the time place and cause of injury.

Maloney v. Cohasset. 234-284

A limb of a tree which protrudes over the travelled part of a town highway and endangers persons travelling thereupon may be found to be a defect in the, within the meaning of the statute.

Valvoline Oil Co. v. Winthrop 235-515

Insufficiency of the plaintiff's declaration in an action to recover for personal injuries caused by the alleged defective condition of a sidewalk in front of the defendant's premises. Held that the plaintiff under any reasonable interpretation of his declaration has failed to allege the breach of any legal duty owed to him by the defendant.

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6 STATUTORY NOTICE

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7 PROCEDURE

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VIII Private Ways

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Liability of city, where traveller was injured on a. On facts finding warranted that a, had become a, by adverse use.

Sullivan v. Wordester. 232-111

Where mortgagee made partial releases of the mortgage as to all of the lots of land abutting on a, describing all of said lots as bounded either "by" the way or "on" the way the title to the fee of the, is in the owners of the abutting lots free and clear of the mortgage.

McCarthy v. Everett. 234-231

Where release describes the land to which the release applies as bounded "by" or "on" a, the land is released to the centre of the way if there is nothing in the deed which requires a different construction.

McCarthy v. Everett. 234-231

Bill to enjoin the defendants from obstructing a, by a fence and rocks. It is proper to include in the final decree an order as to the width of the opening in the fence even if the bill does not seek to establish the width of the.

Dunham v. Dodge. 235-367

Rights of grantees of lots bounded on a way shown on a plan. Grant by implication of a right of. Desirability of a way for purposes of prospect as necessary to the granted premises.

Prentiss v. Gloucester. 236-36

Held that the use of a certain private way was limited to the occupants of certain new dwelling houses to be erected and that when the dwelling houses were destroyed the right of way was extinguished.

Nash v. Eliot Street Garage Co. 236-176

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McDonough v. Swampscott Neighborhood Club. 236-238

Bill to enjoin the obstruction of a. Decree entered awarding nominal damages and directing the restoration of the passageway to its former condition and permanently enjoining the defendant from obstructing or interfering with the plaintiff's lawful use of the way within the limits described in the bill.

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Bill by, the executors named in a will to enjoin the testator's from contesting the will and to compel her specifically to perform an antenuptial agreement between herself and the testator.

Eaton v. Eaton 233-351

Petition for an allowance to the petitioner as her first husband's widow dismissed. Divorce obtained by the first husband in another state with full knowledge of the petitioner.

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I In General**II Attestation****III Codicil****IV Construction****V Contingent****VI Execution****VII Fraud or Undue Influence****VIII Married Women****IX Mistake****X Probate****XI Revocation****I In General**

Where the terms of a compromise of the controversy concerning the will of the father made a certain inalienable and non-assignable interest in a trust given to the son under said will assignable by said son which compromise was ratified by a decree of court an assignment by the son of said interest cannot be repudiated by him.

Woodard v. Snow 233-267

An agreement to make a, must be in writing.

Sughrue v. Barlow 233-468

Exercise by her, of a special power of appointment over the trust prop-

erty reserved by the donor of the trust to herself.

Greenough v. Osgood . . . 235-235

Normality of the mind of the testator as bearing on the question of his testamentary capacity.

Becker v. Becker 238-362

II Attestation

Held that an attesting witness was not rendered incompetent because his interest in the property to be disposed of by the will was not a present vested pecuniary interest but only a contingent interest in a certain fund.

Renwick v. Macomber . . 233-530

III Codicil

As to the affirmation and republication of a will by a. Invalid will made valid and republished by a, becoming operative as a will as of the date of the.

Taft v. Stearns 234-273

IV Construction

Extrinsic evidence to show the intent of the testator and to explain the, inadmissible.

Lamb v. Jordan 233-335

Held that the will indicated an intention to dispose of all the estate of the testatrix and that the word "or" before the words "the right" should not be construed to overcome that intention.

Dunbar v. Hammond . . . 234-554

Where the beneficial interest in a trust created by a, is claimed by two corporations neither of whose names exactly corresponds to that given in the, evidence is admissible to aid in its. Such evidence may be received notwithstanding that the description of the beneficiary in the, more clearly corresponds to that of one claimant than to the other, and although one might better carry out the testator's purpose than the other. While evidence cannot be received to contradict or control the language of a will or to show that the testator intended something different from what is expressed therein, where, as in the will under consideration no ambiguity appears on its face, but an uncertainty arises upon its application to existing circumstances evidence is admissible of all the surrounding facts known to the testator and exist-

ing or in mind when the will was made and also as to his relations with the claimants.

Kingman v. New Bedford Home For Aged 237-323

Of a, "in the light of attendant circumstances." Held that the testator in the ninth clause of his will exercised a power of appointment and appointed to his widow the net income not only of the property which he owned outright but also of the trust fund under his father's will.

Ames v. Ames 238-270

V Contingent

(No case found)

VI Execution

(No case found)

VII Fraud or Undue Influence

Where reputed wife was charged with, certain statements made by her were not admissible on the issue of. Evidence of her son excluded as too remote also his statements to his mother's attorney were not admissible. Evidence of attorney who drew the will but was not a subscribing witness admitted on the question of soundness of mind of the testator.

Old Colony Tr. Co. v. Di Cola 233-119

On the evidence finding not warranted that the will was executed through. As to what constitutes, which will invalidate a will.

Neill v. Brackett 234-367

Held that two clauses in a will giving R. the residue of the testatrix's estate and appointing him executor were procured to be executed by the, of R. Discretionary to admit in evidence the account of R. as executor of the will of the father of the testatrix.

Rowe v. Collamore 238-15

Will of a woman which gave all her property to her only surviving son and omitted to provide for the widow and children of a deceased son, the surviving son being named executor without sureties on his bond. On the evidence held that a finding was warranted that the will was procured to be executed by the, of the said surviving son.

Goldsmith v. Gryzmish . . . 238-341

Declarations and admissions of a legatee or devisee under a will who is charged with procuring the making of the will by, are admissible, when.

Becker v. Becker 238-362

VIII Married Women

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IX Mistake

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X Probate

Certain evidence as to the conduct of an executor pending the allowance of the will properly excluded as irrelevant.

Fisher v. Ford 232-56

The trial judge may properly refuse to instruct the jury as to the length of time within which a will should be presented for, by its custodian.

Fisher v. Ford 232-56

The general notice by publication and mailing in proceedings for the, of a, are sufficient for the probaton of the, even if the notice did not reach those interested in the estate.

Renwick v. Macomber . . . 233-530

Framing of issues in the Supreme Judicial Court for a trial by jury in the Superior Court upon an appeal from a decree of the Probate Court allowing a. Form and substance of issues.

Rowe v. Collamore 238-15

Proof and allowance of a, in the Probate Court. Order of notice. Hearing and decree on order of notice. Allowance of a, upon the testimony of one only of the subscribing witnesses.

Goodrich v. Hanson 238-313

Trial on issues of soundness of mind of the testator and undue influence. Motion for a new trial of issues. Exceptions to the refusal of the judge to set aside the answer of the jury to one of the issues and to grant a new trial overruled.

Becker v. Becker 238-362

XI Revocation

On facts held that the marriage of the deceased revoked his.

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WITNESS

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II Competency

III Examination

- 1 CORROBORATION
- 2 CROSS-EXAMINATION
- 3 DIRECT
- 4 IMPEACHMENT
- 5 INCRIMINATION
- 6 RE-EXAMINATION

IV Procedure

I In General

As to failure of defendant and his son to testify although present in court.

Stimpson v. Hunter 234-61

The failure of a defendant to testify does not as matter of law prevent him from relying upon any legal defence to the suit.

Capen v. Capen 234-355

II Competency

A voluntary, waives every personal privilege.

Gossman v. Rosenberg . . 237-122

Of a girl six years old to testify in a criminal case. Admission of her testimony after being examined by the judge and the defendant's counsel and instructed by a priest.

Com v. Tatisos 238-322

III Examination

1 CORROBORATION

Weight to be given the uncorroborated testimony of an accomplice.

Com. v. Leventhal 236-516

2 CROSS-EXAMINATION

Limits of, are within the discretion and control of the trial judge.

Com v. Russ 232-58

Discretionary with court on, as the admission of certain evidence in action by a real estate broker for a commission.

Riley v. Mills 232-86

Extent of, is within the discretion of the trial judge.

Chase v. Boston Elev. Ry. . 232-133

Del Visco v. General Electric Co. . 235-415

Com v. Homer 235-526

On, the plaintiff can ask whether the witness a medical expert was in the general employment of the defendant or of the defendant's counsel.

Bilodeau v. Fitchburg & Leominster St. Ry. 236-526

A fair and full, to develop facts in issue or relevant to the issue is a matter of absolute right and is not a mere privilege to be exercised at the sound discretion of the presiding judge and the denial of the right is prejudicial error.

Gossman v. Rosenberg . . 237-122

Limit and scope of, in a trial of a libel for divorce.

Freeman v. Freeman . . . 238-150

In the practical administration of justice, the presiding judge, especially in a criminal case, must be given a broad discretion as to the extent and scope of legitimate.

Com v. Kaplan 238-250

3 DIRECT

(No case found)

4 IMPEACHMENT

Discretionary to exclude certain evidence to impeach the credibility of an executor as a.

Fisher v. Ford 232-56

As to testimony of co-conspirators at a criminal trial for conspiracy. The jury should take into account whether these witnesses were "under the strong bias of self-protection."

Com v. Harris 232-588

Of a witness under St. 1914 C. 406 by showing his conviction of a misdemeanor.

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As to the right of a party to impeach his own witness.

Bloustein v. Shindler . . . 235-440

Evidence of testimony before the grand jury admissible to discredit witness.

Com v. Homer 235-526

Evidence tending to show that the witnesses were intoxicated or under the influence of liquor is admissible as it affected the credibility and weight to be given to their testimony and to contradict their testimony that they were sober at the time of the accident.

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5 INCRIMINATION

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6 RE-EXAMINATION

(No case found)

IV Procedure

On failure of the defendant to produce its books and accounts when summoned by a subpoena duces tecum. Introduction of parol evidence of the contents of such books and records. Such a failure to produce documents on demand at a trial or on the subpoena duces tecum is not in itself evidence of the alleged contents of such documents.

Gregg v. Puritan Tr. Co. .237-146

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Mandamus will not lie to compel the public service commissioners to file an award determining the rent to be paid for use of the Union Station in.

B. & A. R. R. v. Public Service Comm'rs232-358

Validity of assessment made by the mayor and aldermen of, for the construction of a sewer. Item properly included in the cost of such construction.

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WORKMEN'S COMPENSATION ACT

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IV Compensation

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X Incapacity (see Ability to Earn)

XI Industrial Accident Board and Arbitration Committee

XII Insurance

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XVII Wages

I In General

As to when an injury arises out of an employment.

Keaney's Case232-532

- 1 INJURIES TO WHICH ACT APPLIES

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Where employee's death was caused by her falling at the top of the stone steps at the entrance of the building where she was employed. Hallett's Case232-49

Where head waiter in a hotel was killed by a waiter whom he had rightfully discharged a few hours earlier on the same day.

Cranney's Case.....232-149

Where teamster got down from his wagon to recover certain receipts which were in his hat which had blown off into the street and while doing so was struck and fatally injured by a passing automobile.

Keaney's Case.....232-532

Where employee of town received a sunstroke while working for the town.

McCarthy's Case.....232-557

Held that a woodchopper was not an independent contractor and was injured in the course of and arising out of his employment.

Goff's Case.....234-116

Where an insurance solicitor and collector was struck and killed by a street-car.

Moran's Case.....234-566

Where employee injured in the act of alighting from an elevator in the store of her employer.

White v. E. T. Slattery Co.
236-28

Where the death of an employee resulted from pulmonary tuberculosis induced by injuries received by being thrown violently from the seat of his employer's wagon where he was engaged in his regular work.

Glennon's Case.....236-542

Where the employee a painter died from sclerosis of the coronary arteries resulting from assimilation of lead which occurred during his employment.

O'Donnell's Case.....237-164

Injuries received by an employee by reason of the premature starting of an elevator which he was entering on the first floor of a building on the way to his work on the fifth floor of the building.

Latter's Case.....238-326

Where an employee of an independent contractor was fatally injured while in the general employ of a town to the extent of the particular work in which the employee was engaged at the time of his injury.

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2 INJURIES TO WHICH ACT DOES NOT APPLY Vol. I, P. 471

For personal injuries sustained by an independent contractor.

Centrello's Case.....232-456

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Where employee is injured while in the employ of the executrix of his his employer's estate. The provision of St. 1911 C. 751 Part V § 2 Cl. 1 that "Employer shall include the legal representative of a deceased employer" is not applicable to this case.

Keohane's Case.....232-487

Where employee was injured during the noon hour in a packing room in the factory where he was employed.

Rochford's Case.....234-93

Where city employee was injured while sitting on a railroad track during the noon hour eating his luncheon.

Haggard's Case.....234-330

Where employee returning from answering a telephone call stopped to talk with a fellow workman and while looking into a tank received an electric shock which caused his death.

Maronofsky's Case.....234-343

Where employee injured by the bursting of a bottle which he was attempting to fill from a "bubble fountain."

Bolden's Case.....235-309

Neuralgic pain suffered by a cigar maker.

Pimental's Case.....235-598

The Act does not cover disease contracted by employees in the course of and arising out of their employment.

Pimental's Case.....235-598

Where employee operating two dyeing machines while on the roof of the factory for the purpose of repairing a ventilator fell through a hole in the roof onto a revolving fan and was severely injured.

Koza's Case.....236-342

Where the cause of death of an employee is wholly a matter of conjecture. Employee killed by falling down an elevator shaft.

McMahon's Case 236-473

Where the mate of a vessel used in coastwise traffic was killed while the vessel was within three miles of shore.

Dorman's Case 236-583

Where the causative relation between employment and injury is remote and speculative.

Braley's Case 237-105

Where an employee during a strike in the plant of his employer was assaulted and injured when after leaving the factory he with other fellow employees was being escorted by the superintendent of the factory through the streets to a boarding house.

Rourke's Case 237-360

Where an employee while crossing a railroad track on the way home from work was struck by a train and fatally injured.

Bell's Case 238-46

In crossing the railroad tracks the employee was a mere licensee if not a trespasser. The employee was on his own business and not that of his employer when he was injured on the railroad track. The risk from which he suffered was not a risk of his employment.

Bell's Case 238-46

A sunstroke causing death received by a teamster while in the course of his employment.

Dougherty's Case 238-456

3 KNOWLEDGE OR NOTICE OF INJURY

Finding not unwarranted that the subscriber or its agent "did not have knowledge of such injuries as soon as practicable after their occurrence."

Frier's Case 232-181

Where employee who was injured when in the act of alighting from an elevator in the store of her employer failed to give the notice required by Part I § 5 of the Act it was held that she was not entitled to maintain an action at common law.

White v. E. T. Slattery Co.
236-28

The employer must have knowledge within the time when the written notice should have been given. "Knowledge" is used in the statute in its ordinary sense as meaning actual knowledge, but not absolute certainty. Held that an oral notice of injury given by an employee to the second man or "boss foreman" was not sufficient as the second hand or "boss foreman" was not the agent of the employer within the meaning of Part II § 18 of the.

Walkden's Case 237-115

Although written notice of the injury was not given as required by Part II §§ 15 and 16 of the Act it was held that the employer "had knowledge of the injury". The employer made out a report of matter and knew of the employee's removal to a hospital the extent of his injuries etc.

Lapan's Case 237-340

II Ability to Earn

Vol. I, P. 473

Discontinuance of payments by the insurer with the approval of the Board on the basis of total incapacity is not an equivalent of a decision that there was no incapacity. The Board subsequently may make a decision as to the termination of all disability.

Frizzi's Case 237-460

III Casual Employment

(No case found)

IV Compensation

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1 IN GENERAL

As to findings of the Board as to the amount of, to be paid to the fourteen year old half brother of the deceased employee.

O'Flynn's Case 232-582

Expenses incurred by the parent on account of the son are irrelevant in ascertaining the amount of, to be paid after the fact of dependency has been established.

Freeman's Case 233-287

Method of computation of.

King's Case 234-137

Marvin's Case 234-145

A finding that, for total incapacity should cease as of the date of the second hearing was correct.

Barry's Case.....235-408

Held that illegitimate children were dependents under the Act and were entitled to.

Gritta's Case.....236-204

Held that the aunt of the deceased employee who was not his next of kin was not entitled to, as a dependent under the.

Stafford's Case.....238-93

2 ADDITIONAL

An employee is not entitled to, for injuries to the fingers of his right hand beyond the specific compensation limits except where the hand is rendered permanently incapable of use.

Jakutis's Case.....238-308

3 DOUBLE

Held that upon the evidence the employer was not entitled to.

Sciola's Case.....236-407

Held that for the reason stated the employee was not entitled to, for injuries to the fingers of his right hand.

Jakutis's Case.....238-308

4 FULL

(No case found)

5 FURTHER

(No case found)

6 NONE

(No case found)

7 PARTIAL

(No case found)

V Deduction

(No case found)

VI Contributory Negligence

(No case found)

VII Dependency

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1 IN GENERAL

A half brother of a deceased employee fourteen years of age found to be dependent although no payments were made directly to him but were paid to another for his benefit.

O'Flynn's Case.....232-582

Expenses incurred by the parent on account of the son are pertinent in determining the fact of, but irrelevant in ascertaining the amount of compensation to be paid after the fact of, has been established.

Freeman's Case.....233-287

A child who was his deceased father's sole dependent did not cease to be entitled to the performance of an agreement for compensation when he became eighteen years of age and self-supporting.

Cronin's Case.....234-5

Held that illegitimate children were dependents under the Act and were entitled to compensation.

Gritta's Case.....236-204

Held that the aunt of the deceased employee who was not his next of kin was not entitled to compensation as a dependent under the.

Stafford's Case.....238-93

2 FULL

Daughter over eighteen years of age and totally blind as well as widow held to be wholly dependent.

Gavaghan's Case.....232-212

A minor under the age of eighteen years if he is living apart from his sole surviving parent for justifiable cause or has been deserted by him is not conclusively presumed to be wholly dependent upon such parent.

Moran's Case.....234-152

Held that widow was not entitled to, because she was not at the time of her husband's death living with him within the meaning of the Act.

Breakey's Case.....235-460

3 PARTIAL

Held that there was evidence sufficient to support a finding that a mother was partially dependent on the earnings of her sixteen year old son.

Freeman's Case.....233-287

Evidence is admissible respecting the intent of the deceased to send to

his mother the part of his wages which remained after paying for his board and clothing.

Freeman's Case 233-287

VIII Employment

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1 EMPLOYEE

Where, was injured while in charge of a locomotive crane held that, while in charge of the locomotive crane remained the, of his general employer and did not become the, of the special employer.

Emack's Case 232-596

A "minor" is within the provisions of the, and is bound by its terms. Gilbert v. Wire Goods Co. 233-570

On facts held that the, continued subject to the direction and control of his general employer and did not become subject to that of the company to whom he was lent or hired. Hogan's Case 236-241

The, was on his own business and not that of his employer when he was injured on the railroad track. The risk from which he suffered was not a risk of his employment. In crossing the railroad tracks the, was a mere licensee if not a trespasser. Bell's Case 238-46

As to whether an, of an independent contractor was in his employ or was in the general employ of a town to the extent of the particular work in which the, was engaged at the time of his injury.

Chisholm's Case 238-412

2 EMPLOYER

The Act does not apply where employee injured while in the employ of the executrix of his employer's estate.

Keohanes' Case 232-487

Held that the failure by an, to install certain safety devices did not constitute as a matter of law "serious and wilful misconduct."

Sciola's Case 236-407

The test to determine which of different persons in the, ordinarily is who has direction and control of the employee and to whom does he owe obedience in respect of the particular matter in hand.

Chisholm's Case 238-412

IX Examination

(No case found)

X Incapacity

See Ability to Earn

XI Industrial Accident Board and Arbitration Committee

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A decision of the Board on a pure question of fact cannot be reversed on appeal if there is any evidence to support it.

Berman's Case 232-453

Pass's Case 232-515

Amodio's Case 233-104

Freeman's Case 233-287

Perotti's Case 233-297

Goff's Case 234-116

Sciola's Case 236-407

Jakutis's Case 238-308

Denial by Board of a motion to take depositions of witnesses in Italy.

Perotti's Case 233-297

The Board's on review may reverse findings of fact made by a single board member.

Sonia's Case 234-475

A decision of the Board if it be regarded as a finding of fact it is final, if it be treated as a ruling of law it was right.

Bolden's Case 235-309

The Board may take judicial notice of the rules, regulations and orders of the State board of labor and industries for the prevention of accidents.

Sciola's Case 236-407

Right of a dependent to a hearing before an arbitration committee where the injury from which the employee's death resulted was received on May 14, 1917 before St. 1917 C. 297 went into effect whereby the arbitration committee was eliminated and its functions were transferred to a single member of the board.

Devine's Case 236-588

Discontinuance of payments by the insurer with the approval of the Board on the basis of total incapacity is not the equivalent of a decision that there was no incapacity. The Board subsequently may make a decision, as to the termination of all disability.

Frizzi's Case 237-460

XII Insurance

Cancellation of. The question whether there was a cancellation is one of law. The right of cancellation could be exercised only as prescribed in the policy. Notice of cancellation given held to be effective. It is enough that the notice is valid under one of the provisions of cancellation which is not repugnant to the other terms of the policy. The employee's assent to the cancellation held not necessary.

Altinovitch's Case 237-127

XIII Medical Services

(No case found)

XIV Payments

Weekly, of an adult cannot be redeemed except by agreement of the parties.

Jakutis's Case 238-308

XV Practice

Vol. I, P. 480

Jurisdiction of Superior Court. Appeal from Superior Court should be made from a final decree of that court.

Keohane's Case 232-487

There is no right of appeal from a decree of the Superior Court "based upon . . . a memorandum of agreement approved by the Industrial Accident Board.

Sterling's Case 233-485

The right given by R. L. C. 193 §§ 15-19 to have final judgment in civil actions reviewed and vacated is limited to common law actions and does not apply to a decree of the Superior Court made under the.

Sterling's Case 233-485

Held that the plaintiff by failing to give notice under the, had waived her common law rights although she did not know that the defendant was a subscriber under the.

Gilbert v. Wire Goods Co. 233-570

Where an award of compensation by weekly payments has been made by a committee of arbitration and no claim of review of their findings has been filed the questions whether the employee received his injury in the course of his employment and wheth-

er when injured he was in the employ of the insured are not open on a review of the weekly payments.

Hurley's Case 235-387

Review of action of judge in recommitting a case to the Industrial Accident Board for further hearing.

Sciola's Case 236-407

Chisholm's Case 238-412

Right of appeal from a decision of the Industrial Accident Board to the Superior Court. As to the time of filing of copies of the decision of the Board. The statutory requirement as to the presentation of certified copies is a condition precedent to the jurisdiction of the Superior Court.

Sciola's Case 236-407

Chisholm's Case 238-412

Under the Act a denial of a motion for a rehearing of a cause upon any question of fact is a matter of discretion.

Devine's Case 236-588

Proceedings in the Superior Court on appeal from a decision of the Industrial Accident Board. Allowance of exceptions by the Superior Court.

Bell's Case 238-46

XVI Trial by Jury

(No case found)

XVII Wages

Held, that the "annual earnings" were to be ascertained by reference to the, received during the twelve calendar months immediately preceding the injury.

Freeman's Case 233-287

Employee's average weekly, to be computed by dividing his entire earnings during the twelve calendar months preceding his injury by fifty-two.

King's Case 234-137

Marvin's Case 234-145

See Automobile, Equity Pleading and Practice XVIII, Master and Servant, Negligence, Railroad, Superior Court, Way.

WRECK

(No case found)

WRIT

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Validity of an order requiring a non-resident plaintiff to furnish an indorser of the, for costs within ten days without specifying the amount for which the indorser should be responsible. Waiver of objection to the failure of plaintiff to furnish such an indorser. Motion to non-suit the plaintiff.

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ASSISTANCE**

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YEAR

See Time

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Note. The Statutes, Revised Laws and General Laws are in black type; the volume and page of each case where either Statute or Revised Law is cited appears opposite in light type.

The following abbreviations are used: C. chapter, C. C. chapters, S. section, S. S. sections, Cl. clause, Cls. clauses, P. part, R. rule.

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